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ABSTRACT

These proceedings consists of statements by the authors of consultation papers on comparable worth previously submitted to the United States Commission on Civil Rights along with discussions between the consultation participant/authors and members of the Commission concerning issues raised both in the papers and in the statements. The opening statement by Chairman Clarence M. Pendleton, Jr. is followed by an overview of women in the work force (Claudia Goldin). The next section presents statements from the panel on "Occupational Segregation and the Earnings Gap" (Andrea H. Beller, Solomon William Polachek, Paula England, and Brigitte Berger). This section is followed by statements from members of the panel on "Comparable Worth Doctrine and Its Implementation" (Alvin O. Bellak, Donald P. Schwab, Herbert R. Northrup, and Ronnie J. Steinberg). Next, a single statement, "Factual Overview: Current Comparable Worth Proposals at the Federal, State, and Local Levels (Nina Rothchild) is presented. Next, statements are presented from the members of the "Legal Perspectives and Precedents" panel (Winn Newman and Robert E. Williams). The final section contains statements from the panel, "Comparable Worth as a Remedy for Sex Discrimination (Joy Ann Grune, June O'Neill, Jeremy Rabkin, and Ray Marshall). (IS)

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Consultation on Comparable Worth
Proceedings, June 6, 1984

Opening Statement of Chairman Clarence M. Pendleton, Jr.

CHAIRMAN PENDLETON. Good morning. My name is Clarence M. Pendleton, Jr. I'm chairman of the U.S. Commission on Civil Rights. On behalf of my colleagues, I would like to welcome all of you here today to the Commission's consultation on comparable worth.

I would like to say here and now that there is a difference between a consultation and a hearing. In a consultation, the Commission hears from witnesses that it has selected to give it information for study, to decide what we want to do about or with an issue.

This is not to say that from this consultation we necessarily have to come to agreement or a recommendation or a policy position. So I want to make it clear that we are here only to hear those persons that we have selected.

If there is information anybody wishes to send to the Commission for the Commissioners' perusal or use, you can feel free to send it to us. But there will not be testimony from persons other than those who are on the program.

I'm also obliged to say here that if there are any hearing-impaired people in the audience, we need to know your locations, so that the interpreters may be able to have you in sight or you have them in sight.

Are there any such persons here?

Federal law requires equal pay for equal work and prohibits discrimination on the basis of sex in employment. Similar State laws further protect working men and women.

The number of women entering the labor market has increased dramatically over recent years. During this period, their earnings have remained roughly three-fifths that of the earnings of males. Many women still enter and remain in predominantly female occupations. Some persons attribute occupational segregation and the pay gap to discrimination against women.

Comparable worth has been described by many as a major civil rights issue in the eighties. It is the subject of numerous articles and books. The comparable worth concept is the subject of litigation in the courts, labor negotiations, and legislation in the States. Several bills addressing the issue are now pending in Congress.

The Commission's jurisdiction extends to discrimination on the basis of sex, and we remain committed to the need to eliminate sex discrimination in employment. As a result of this strong, continuing commitment and the growing attention to occupational segregation and the pay gap, as well as the increasing mention of the comparable worth concept, the Commission decided to hold this consultation.

Over the next 2 days, we will be hearing from experts on pay equity, assessing the merits of comparable worth as a remedy for sex discrimination in employment. These experts will be discussing the causes of and the explanations for occupational segregation and the pay gap in wages of men and women. The legal aspects of the comparable worth concept will be explained, as well as current comparable worth proposals at the Federal, State, and local levels.

This consultation is structured to allow the panelists 20 minutes for their presentations. A question and answer period will follow. Due to the time constraints, we will not be able, as I mentioned, to entertain questions from the audience.

We hope these presentations will be both enlightening and informative.

With that, I will turn to Dr. Goldin. Thank you very much.

COMMISSIONER BERRY. Mr. Chairman, may I be recognized for a moment?

CHAIRMAN PENDLETON. Yes.

COMMISSIONER BERRY. Could you please ask the panelists to merely summarize quickly their re-

marks? Because I think we have all read these papers, and I'm not prepared to sit and listen to papers being read, and we would have more time for questions.

CHAIRMAN PENDLETON. Introducing you, Dr. Goldin, I would like to say that you will provide us with the historical perspective of the changes in the relative earnings of men and women, including an overview of occupational patterns in the 20th century.

Dr. Goldin is an associate professor of economics at the University of Pennsylvania.

I would just like to reiterate Commissioner Berry's comments. We have all been inundated with papers. They have been voluminous and have required a lot of time to read and to digest. If you would give us, in 20 minutes, a summary as best you can, in which you might wish to make some comments that might not be in the paper, we would be glad to have that, and it would give the Commissioners a chance to raise questions and have some discussion with you.

Thank you.

FACTUAL OVERVIEW: WOMEN IN THE WORK FORCE

Statement of Claudia Goldin, Associate Professor of Economics, University of Pennsylvania

DR. GOLDIN. Thanks.

What I'll be discussing today and summarizing in my 20 minutes are long-run changes in the relative earnings of females to males and in the variables that determine this ratio. Now, it is often thought that economic progress will eventually eliminate all differences between the earnings of females and males. That is, we believe that there will be a substitution of inanimate power for human strength and education for on-the-job training and intellect for might and so on.

In this paper, the historical record is examined to see if changes in technology, work organization, educational standards, and increases in life-cycle labor force participation of females have altered the relative earnings of females to males. The reason that I ask this question is because, as the introduction pointed out very well, the current level of this ratio is about 0.6 and, indeed, has been about 0.6, hovered around it, since about 1950.

If one uses a finer microscope, one sees that it, indeed, declines a little after 1950 and then rises a little in the more recent period. But it is, in some sense, remarkably stable. But the last 35 years is really a very short period of time within which to test this sort of hypothesis that I just laid out. Thus, I asked: What was this ratio a century or two ago in our country, and how has it changed over time?

The implicit framework that I'll be using is one of an evolving labor market in which skills, education, strength, job experience are differentially rewarded across occupations that emerge over time as the economy develops.

The stress here is on the demand side in the sense that this is a very long-run analysis. Indeed, you'll see that in some sense I am raising the notion of stages in the labor market, where an economy will begin in an agricultural stage, will evolve, let's say, a light industry stage, into a heavy industry stage, into, let's say, a growing tertiary and clerical sector, and into, then, a growing professional labor force.

That's not to say that each one of these stages is separate. Indeed, each one of them flows from one to the other. There is an emerging demand for certain types of labor and certain skills, certain attributes, are rewarded. The question is: How does this affect these relative earnings?

This framework is implicit in my discussion of the earnings gap in historical perspective, and I will discuss two primary aspects of it.

The first is a factual overview, and as a factual overview, it will be a description of the time series of this ratio, and in addition, some of what I call the proximate determinants, which is just asking how this ratio changes over time if we hold one thing constant or another thing constant.

The second aspect that I'll be discussing is an interpretive overview. Here I'll try to get into some of the underlying causes invoking this implicit framework.

It is no accident that the earnings gap literature, as was just stated, has stressed only the last three and a half decades. There are severe data problems involved in going back further. We stress the last three and a half decades, not because the last three and a half decades are of primary importance, or are the only decades of importance, but they are the only decades for which we have readily available data, and it's always convenient to use those decades. If the Current Population Reports began in 1900, we would discuss the last 84 years. But they didn't, and so we discuss the last 35 years.

But as I said before, to understand this evolution one must go back one or two centuries. So, how

does one do it? One does it by using archival records and government documents and builds up various time series from wages and earnings and from occupational percentages.

The data problems that I just discussed demand that two series be constructed. One is a very, very long-time series from 1790 to the present, but that only includes data from two sectors, the preindustrial agricultural sector and the manufacturing sector. The second series is an aggregate series for 3 benchmark years so far. The 3 benchmark years are 1890, 1930, and then any one of the current years. I picked 1970. They are computed by weighting occupational distributions by the earnings or the wages of women and men in each occupation.

I turn now to the salient features of these series.

The first series, as I said, is this very, very long-time series. We begin in the preindustrial agricultural sector at the turn of the 19th century. Now, relative wages for females compared to males in the agricultural sector are very much determined by the nature of the crop.

In the American Northeast, where the crop was grains, and where the work required a tremendous amount of strength in this preindustrial period, the relative earnings of females to males were extremely low. It was about 0.3.

The relative earnings of females to males in areas in which cotton and tobacco are produced are considerably higher. One finds the same pattern in Southeast Asia today in the differences in relative earnings between females and males in rice versus tree crops. Very similar patterns appear in areas in which preindustrial sector relative earnings of females are very low: One tends to find industrial development occurring more rapidly or earlier in them.

That's precisely what happened in the United States between the North and the South. Of course, in our country, we have a very different piece of history, but it is related to this, in that it is no accident that we had slavery in the South, where, in fact, women and children were relatively more productive. That, of course, is a completely separate issue.

With industrialization, this ratio began to rise and rose very rapidly and immediately, so that by 1820, it was about 0.35. By 1832, when the McClane report was done, which was a census of manufacturers, it was about 0.44. By 1850 the census of manufacturers indicates that it was about 0.50. So it rises very, very rapidly during industrialization in a way that is predicted by the original hypothesis.

Then after 1850, there is a more gradual increase, increasing to about 1930, and then a plateau. So that's the first series.

The second series is an aggregate series and, thus, of more interest. Manufacturing, while a very important part of the economy and part of the labor force, employed still a fraction of the labor force, and thus we must build up an aggregate series.

What does the aggregate series show? In 1890 the aggregate gender gap or earnings gap was about 0.46. In 1930 it was about 0.55. In 1970 it was about 0.60.

Therefore, the aggregate ratio increased by about 32 percent over the last 80 years. This ratio would rise even more if hours worked were held constant. As has been pointed out over and over, particularly for the most recent period, while the ratio that we usually cite is about 0.6, if hours worked were held constant, it would be more like 0.7.

This ratio was constructed by a weighted average of wages for males and females within each of six occupational groups for each of the 3 years, weighted by the structure, the percent of the female or male labor force in that occupation.

Thus, it is instructive to see why these changes occurred and what factors were tending in one direction or the other direction to simply partition the change into separate factors and get what I call the proximate determinants, which are not the underlying causes, but really a simple algebraic manipulation.

I perform a somewhat similar but somewhat easier experiment instead of this sort of partition by creating a matrix in which the structure changes across the rows, but the wages are held constant. The wages change down the columns, but the structure is held constant.

Then one can ask if we hold the structure constant, do the wages matter? If you hold the wages constant, does it seem like the structure matters?

It seems that changes in the wages appear to be considerably more important than changes in the structure, at least when we use only six occupational groupings.

Let me point out that because there is extensive occupational segregation, the finer and finer you make these occupational groupings, the more you're going to find that it's the occupations that matter

and less so the wages. Thus, you have to come to grips with what a good occupational grouping is. Economists do have ways of answering this question, the same way we would answer what makes a commodity a commodity. This issue comes up in antitrust cases quite frequently.

One can further subdivide and partition in various ways that I do in the paper. It seems as if the results that I get from these experiments (they are not true partitions; they are little experiments) are quite robust to the way in which you attempt to partition, and thus that it appears as if, given that these occupational groupings are the correct number, relative wages within the occupations and how those change over time for females and males seem to be of paramount importance and the structure in some surprising way somewhat less important.

Let me also point out that there is another trend going on here that should also be partitioned out. Not only are there changes in relative wages for females to males within occupations, but there was a wholesale change in the skill differential in the economy across these two centuries.

It's very important to understand that not only is this change occurring for females to males, but one must understand in what sense that is different from or the same as the change in the entire skill differential due to changes in immigration and changes in education for the male labor force alone.

The analysis of the proximate determinants has isolated the variables of concern, but hasn't told us why change has occurred and hasn't told us what determines the absolute level of the earnings gap. Thus, I turn to an interpretive overview of the underlying causes.

In line with the implicit framework that I discussed before, there are three main categories of attributes that I'll discuss that are differentially rewarded across occupations. Here let me briefly discuss these three.

The first is what I call gender specific skills. The second is education. The third has to do with work experience and the expectations of individuals concerning work experience.

I'll discuss each very briefly only for a particular time period in which I think it's most relevant.

The first one is gender specific skills. In 1890, 47 percent of all females in manufacturing worked on piece rates. This allows us a very interesting experiment. In certain industries that I've been looking at, the ratio of female wages to male wages in these occupations, or earnings I should say, was about 0.58.

The overlap of females and males in manufacturing at this time occurred primarily in occupations where the pay was by the piece. Thus, differences in earnings entirely reflect differences in physical output, since the piece paid was the same. Because there was once, in fact a century ago, one of the most prolific Commissioners of Labor named Caroll Wright, we have these data. I don't think we have, today, as good data as Caroll Wright produced then. What we have are data by firm, so we can get laborers within the same firm working the same machinery. Differences in physical output accounted for about 60 percent of the differences in earnings, indicating that these were occupations which demanded a tremendous amount of strength or some strength.

It may also have been that males had more incentive. We don't know precisely what the differences were. All we know is that these are true differences in physical output, not differences in hours, not differences in machinery, and not differences in pay.

Of course, the fact that this accounts for about 60 percent of the difference within occupations in which there was overlap—and the occupations in which there wasn't overlap extend from skilled carriage makers to unskilled workers—indicates that some of the difference was surely due to differences in skill.

The second attribute that I would like to discuss is education. In the paper I point out two very important periods of change in education which affected the female labor force and affected this gender gap to a considerable degree.

The first one is the rise of high school, which occurs in a brief period of time from about 1910 or 1915 into the 1920s, when you get a rapid increase, with individuals entering and completing high school.

These are cohorts of women who enter the clerical labor force when they're young and, indeed, later enter the labor force in very large numbers in the 1950s.

In terms of the earnings gap, this affected relative earnings. This is one of the prime reasons why relative earnings from the 1890 benchmark date to the 1930 benchmark date actually rise as much as they do.

Why, from the 1930 benchmark date and the 1970 benchmark date, they rose somewhat less has something to do with another transformation of the labor force, which is the rise of college education after the 1940 period, which initially benefited males considerably more than it did females because males had a much greater life-cycle labor force participation.

Let me go quickly into an issue of tremendous concern, which is life-cycle labor force participation.

I think that most of you have the paper. There is a diagram in it called figure 1 on one of the many unnumbered pages in the paper. And the diagram looks like this.

If you look at this diagram, you will see that these are labor force participation rates for cohorts where the birth cohort is indicated on each one of the lines and their participation rates within the marital status "married." That must be kept in mind.

The individuals in this diagram might have much higher participation rates when they are single. They then marry, and their participation rates go down somewhat.

As you can see, participation rates rise significantly for each one of those cohorts as it progresses over time. What this means is that unless these individuals had very rapid turnover in the labor market when they were young, it must be the case that individuals in the labor market are being joined by individuals over time whose work experience is both brief and distant.

The greater the change in labor force participation for females over time, unless there is really rapid turnover, the more we're going to get a dilution of the work force with individuals who, while intelligent and able, are basically unskilled in the work force, and whose experience in the work force is going to be very small.

Two studies have been done that produce estimates of life-cycle labor force participation which indicate that over the last 40 years or 50 years, the work experience of the working population of women has increased trivially.

There are many people who say there is a paradox. The paradox is that for the past 30, 40 years, we have had rapid increases in the labor force participation, and this indicates that there is a growing social revolution going on for women, but it's called into question by the stability of the relative wages of females to males. Indeed, this is not a paradox at all. It in some sense must be the case, because if experience matters in the labor market, matters in terms of earnings, we should see this, and it shouldn't be anything that's terribly disturbing.

But finally what is disturbing, though, is that there are many studies, and some that I have done, which show that individual women who are in the labor force and who stay in the labor force over long periods of time do not advance to the same degree that men do. In many ways that's why we're here. The question is: Why don't they?

Once again, let me appeal to this diagram and say that work expectations might have something to do with it. If you are in a period of rapid change in any important variable—here, labor force participation—can you extrapolate from the experiences of your elders and get any notion of what your life is going to be like in the future? The answer is, possibly not.

Indeed, if you look at figure 1-A, you'll see that there are data from the National Longitudinal Survey that asked young women: What do you think you're going to be doing when you're 35? Point *A* gives what these young women thought that they were going to be doing in terms of their future labor force participation when they were 35. They were asked this when they were about 20 years old.

That was more in line with their mothers' labor force participation rate at that year. Their own turned out to be point *B*. This could mean that these individuals' expectations vastly or had vastly understated their participation and, thus, that they underinvested in certain amounts of training.

It turns out that, for various reasons that I'm not very certain of, individuals have revised their expectations now and that are far more in line with what is actually happening.

In summary, relative earnings across all occupations have increased through most of this century, although not over the past 35 years, and have advanced within manufacturing across the 19th century as well.

Let me end with a quotation from another economist who was faced with a similar undertaking a while ago. He noted, "When I was asked to prepare a paper upon the alleged differences in the wages paid to men and to women for similar work, I felt very reluctant to undertake the task. . . .The problem is apparently one of great complexity, and no simple or universal solution of it can be offered."

The writer was the British Fabian Sidney Webb. The article appeared in the very first volume of the

British journal, the *Economic Journal*. The editor was Edgeworth, and the date was 1891.

Thank you.

CHAIRMAN PENDLETON. Dr. Goldin, thank you very much for an enlightening presentation.

Do I see hands of Commissioners who may wish to ask questions?

Commissioner Destro.

COMMISSIONER DESTRO. Thank you, Dr. Goldin. I have not only enjoyed reading your paper, I have also picked up a few more questions in listening to your presentation.

One of the questions that I have deals with your framework, and it's in relation to a number of the other papers and some of the comments that you made in yours. On your second page, and I guess now I don't have to apologize if the pages were unnumbered. I thought maybe mine was aberrational.

DR. GOLDIN. They were numbered in pencil.

COMMISSIONER DESTRO. Oh, okay. They just didn't come out in the Xerox. All right. In any event, you indicated that your implicit framework was one of an evolving labor market in which skills, education, strength, and job experience are differentially rewarded across occupations.

In the paragraph preceding note 7 of your paper, you indicated that those espousing comparable worth eschew human capital theory, but it seems to me that it includes human capital theory, as I understand it, and that it is included in the implicit framework of your study.

Is that a correct observation on my part?

DR. GOLDIN. Not necessarily, but it could be. I wasn't joining those two parts of the paper. The reason that I have the latter one is that my reading of the comparable worth literature from the legal side was that we should look at the attributes of jobs and not the attributes of people.

We as economists generally look at the attributes of people, although in competition it wouldn't matter. It just depends upon where your data happen to be better. Okay?

COMMISSIONER DESTRO. Okay. I guess the—I wondered about someone who looks at the attributes of jobs. Would they consider the data that you have given us to be relevant to the issue?

DR. GOLDIN. Right. I think so. I think that it really just depends on, as I understand—I found the legal literature to be rather difficult, because I come at it looking at the attributes of people. I wasn't quite certain exactly what happens if you look at the attributes of jobs. Perhaps this will come out in the discussions, the conditions under which they won't coincide.

One of the things that I found interesting in the historic literature is that Edgeworth, in 1922, actually discussed the same point. So I read it carefully, and Edgeworth said that they should coincide, but under certain conditions they might not coincide. I haven't given tremendous thought to that point, but it is a very important point for us to consider.

COMMISSIONER DESTRO. One of the other questions that I have deals with the charts that you had on labor market participation.

DR. GOLDIN. Yes.

COMMISSIONER DESTRO. It seems from reading your section 2 that marital and family status appears to be a critical variable. How critical would you say it is?

DR. GOLDIN. That marital status and—

COMMISSIONER DESTRO. Marital or family status.

DR. GOLDIN. Right.

COMMISSIONER DESTRO. In terms of labor market participation. Because I read the charts—

DR. GOLDIN. Right.

COMMISSIONER DESTRO. —I noted some striking differences—

DR. GOLDIN. Right.

COMMISSIONER DESTRO. —when you added that variable.

DR. GOLDIN. Yes. Well, over long periods of time, it matters tremendously. I think that, of course, since we're dealing with a percentage, everything has to converge to something. I mean, the male labor force participation rate, of course, the entire aggregate of males is around 0.78, and, you know, we're not converging to 1. We're converging to a number considerably below 1. Female labor force participation rates now are fairly high.

So, these differences have got to even out at some point. But as we go back in time, when female labor force participation was much smaller, one finds very, very large differences.

The participation rate of young unmarried females rose throughout the 19th century and reached a peak in the urban areas of America in the early part of this century, when just before we have this tremendous increase in high school, and at the same time we have a very large increase in industrialization. At that point, the difference between the young and the single and the older and the married in terms of

labor force participation was as wide as it's going to be.

So certainly it matters more at certain periods of time than at others. Right now, even being married and having young children is beginning to matter much less.

COMMISSIONER DESTRO. Okay. And then I'll ask one more question, and then if anybody else wants to jump in, they can because I have a number of questions.

CHAIRMAN PENDLETON. Somebody else just wants to jump in.

COMMISSIONER DESTRO. Pardon?

CHAIRMAN PENDLETON. Somebody else just wants to jump in.

COMMISSIONER DESTRO. Okay. One other question on the same tables, and then I'll quit for a moment. Your tables 1 and 2 struck me as being consistent with the assumption that the economic class of the individual or the need of the individual for extra income would be relevant.

Is that consistent with your findings? If so, would that, in itself, have any impact on the wage differential by way of class or race characteristics with respect to education and that type of thing?

DR. GOLDIN. Right. I think that just as there are two blades to the scissors, in the labor market there is the supply side and the demand side; there are also these two sides in terms of family decisionmaking, and economists split them up in their way into these income and substitution effects. I think you're saying, well, there's a very strong income effect going on here across certain groups, that there are groups whose family income is so very low that other workers in the family in these early periods of time were sent into the labor market. Being sent into the labor market, these individuals may have had very low, as we call it, reservation wages.

Thus, it could be the case that what is happening is there is some sort of selection bias over time that in periods of time when you have very low—a group of males that has very low income, and their wives are in the labor force, and they have very, very low reservation wages—that we're in some sense biasing this early period towards very low wages.

That's something that should be thought about in greater detail. I don't know how to implement it, and I think it's an important point and a good one. But over time it seems as if, I mean, if that were indeed the primary factor, then we should expect, over time, female labor force participation to decline, and of course it doesn't. It continues to rise.

It seems as if over long periods of time if this framework is a good one, then the substitution effect seems to be very, very powerful.

So, it's a point that I'll think a little bit more about. Thanks.

COMMISSIONER DESTRO. Thank you.

CHAIRMAN PENDLETON. Commissioner Abram.

VICE CHAIRMAN ABRAM. Thank you very much for a very perceptive paper.

I suppose all of us agree that our interest in the matter is an interest that arises out of the charge that is placed upon us to deal with issues of discrimination.

Now, since 1963 we have had an equal pay for equal work act, with which I'm sure you're familiar. If that act were enforced throughout the country in all of its ramifications and aspects, do you feel that the 0.6 ratio would yield somewhat?

DR. GOLDIN. Isn't that the $64 question?

VICE CHAIRMAN ABRAM. Well, let's put it a little differently. I'm not asking you to give a conclusional statement, but I guess that will probably be our responsibility.

But you've indicated, I think, that grouping matters a great deal, whether women or any other disadvantaged group can enter a certain occupational group is of significance.

DR. GOLDIN. Right.

VICE CHAIRMAN ABRAM. Is that right?

DR. GOLDIN. In some sense, yes.

VICE CHAIRMAN ABRAM. Yes.

Now, the Equal Pay Act addresses itself to that issue; does it not?

DR. GOLDIN. Yes.

VICE CHAIRMAN ABRAM. Now, you have also indicated that even within groups, productivity and incentive and all of the factors that are self-motivating have a part to play; is that correct?

DR. GOLDIN. Yes.

VICE CHAIRMAN ABRAM. And that particularly was true with respect to the rather dramatic examples you gave from those piece work examples in the past; is that correct?

DR. GOLDIN. Yes.

VICE CHAIRMAN ABRAM. So if the issue is fairness—

DR. GOLDIN. Yes.

VICE CHAIRMAN ABRAM. —nondiscrimination, there are many factors involved in addition to equal

pay for equal work that might account for the lack of absolute parity; is that right?

DR. GOLDIN. That's right.

VICE CHAIRMAN ABRAM. And the lack of absolute parity does not necessarily mean discrimination?

DR. GOLDIN. That's right.

CHAIRMAN PENDLETON. Okay, sir.

DR. GOLDIN. Let me just extend this somewhat. When we estimate equations, which we have now called discrimination equations, which we used to call earnings functions, and we find a significant term for—done whatever way we do on the female variable—I was going to say dummy, but that wouldn't be nice—on the female variable, and if this is done properly, then it seems as if it's prima facie evidence of discrimination.

What I was pointing out in terms of the underlying causes is that there may be other factors which involve us in unobservables and that are very, very hard to get at. I think that I certainly agree with Sidney Webb when I said at the end this is an issue of great complexity. I think that it adds a sense of humility in some sense to realize that this has been discussed for a very, very long period of time with, in many ways, a very similar bottom line.

It's a question of great complexity, and, thus, we must bring to bear more than a single regression equation. We must bring to bear the weight of evidence from many, many corners, qualitative evidence, evidence from surveys, theoretical evidence, empirical evidence.

It seems as if the evidence concerning work expectations is very strong, and it points to other factors outside the labor market. It points to factors within society and within the family.

This is not to say that the labor market does not have barriers and does not have discrimination. But I think the best way to get at it is to try to leave it as a residual and to piece away and to pick away. In some sense, that's what my paper is about.

If I don't mention discrimination; it's not because I don't believe it exists, but because I want to be able to pick away at it with variables that I can observe and that I can measure.

Thank you.

CHAIRMAN PENDLETON. Have one more question. Commissioner Bunzel.

COMMISSIONER BUNZEL. One more? Is that all?

CHAIRMAN PENDLETON. Yes.

COMMISSIONER BERRY. I have a question.

CHAIRMAN PENDLETON. If we keep on going, we'll get ourselves into a problem with scheduling. How do you want to handle this?

COMMISSIONER BERRY. Skip the break or something.

COMMISSIONER DESTRO. Right. Yes.

CHAIRMAN PENDLETON. Well, okay. I just want to make sure we know we are on a time frame, that's all. Go ahead, Commissioner Bunzel.

COMMISSIONER BUNZEL. She says she has an urgent question. Urgency always takes precedence over—

CHAIRMAN PENDLETON. We will allow some time for her question after yours.

COMMISSIONER BUNZEL. As a social scientist, let me say that I really very much appreciate your presentation. I'm a political scientist, and you're an economist, but I still appreciate it very much.

Continuing with the question that Mr. Abram just raised, would you say that regression analysis as you've talked about it, or the manipulation of statistics basically, can conclusively show that discrimination causes or has caused disparity in earnings?

DR. GOLDIN. I think under certain circumstances there is rather compelling evidence. I think that it depends; I mean, it depends upon the nature of the sample.

My area of expertise is not that. I am an economic historian. But I can look at certain estimates and say this really seems to be compelling evidence.

As a social scientist, we can never prove anything. We can only pile up the weight of evidence and attempt to convince through a variety of ways, including rhetoric, including argument, including statistics, including qualitative evidence—we can attempt to convince an audience that something is so, but we can't prove it.

But I think there are certain cases in which the evidence is just far, far weightier than other cases, and particularly when it concerns a specific firm. Then I think that the weight of evidence is usually a lot better than when you're running things across many, many industries.

COMMISSIONER BUNZEL. Why has the ratio of female to male earnings tapered off?

DR. GOLDIN. Well, I think that one of the reasons that it's tapered off, as I suggested towards the end, is that with very large increases in labor force participation, you're getting brought into the female

labor force women whose experience is, as I said, brief and distant.

My own estimates, combined with those of some other people, indicate that from 1930 to the present, the years of experience accumulated by the working population of women have not risen very much at all. They have risen somewhat and then not risen very much. When you're in a period of very, very rapidly rising labor force participation, you're not going to have very large increases in the work experience of the working population; indeed, you can have decreases in the work experience of the working population.

You have to remember that we're measuring wages only for those people who are working. If we measured wages for those people who are working and those people who weren't working, then we would have an increase, because the entire population of women has had more experience in the labor market, but the population of currently working women hasn't.

The second point has to do with this issue of education; that during these periods of time of rapidly rising female labor force participation, women still perceived their future as having a rather truncated role in the labor market. Older cohorts, indeed, were quite correct in that.

We have had, since 1940, a transformation in the economy of an extremely large group, a large part of the male labor force that's professional, whose rewards occur because of formal education and because of on-the-job training. Their earnings profiles rise over time.

Women have not plugged into that. Women are just plugging into that now, and I think that the data show over the last 5 years a turnaround and now an increase in this ratio.

I would expect for these two causes, these two underlying causes here, that we will see movement in this ratio. Indeed, if you correct for hours, of course, it is around 0.7.

So, I think we're getting factors tending in two directions, and they balanced out.

COMMISSIONER BUNZEL. So in the technological fields into which we're moving now, you would expect education for women to continue to replace training, which would—

DR. GOLDIN. Well, I expect both are coming into view now. I expect women now, because they anticipate remaining in the labor market, will opt for jobs in which there are rewards to formal education and rewards to what we might call persistence on the job. Sure.

But I think it should be recognized that from 1930 to 1970, if you look at the table, there were still increases in relative wages for females to males within occupations. But this was somewhat balanced out by changes in the occupational structure itself.

CHAIRMAN PENDLETON. Commissioner Ramirez.

COMMISSIONER RAMIREZ. I enjoyed reading your paper very much—

DR. GOLDIN. Thank you.

COMMISSIONER RAMIREZ. —that part in which you were drawing some quantitative analyses. But I wish there was some way we could come up with a model that would take the qualitative elements, which you have recognized as being very critical to any real understanding of what is happening, and juxtapose those with the type of analyses you've done.

I kept looking for the individuals in the data, the real live stories in the data which you presented, and was intrigued by your focusing on expectations, work expectations, that you so heavily related to the expectations or, rather, the experiences of the mothers of the persons that you looked at.

DR. GOLDIN. Right.

COMMISSIONER RAMIREZ. From my own experience and experiences of many of my colleagues, it seems to me that expectations interact with the pervading attitudes within the work force and that whenever you talk about expectations, you do not have solely the individual and his history coming to the setting of expectations, but you have interaction between the context in which the expectations would be played out and the expectations of the individual.

I entered the professional work force in 1964. I am very surprised that I am still in it. It had much more to do with the fact that I was a woman than with the fact that I was a Hispanic, and I did it outside my own State and I did it within the most prestigious and conscientious institutions, including the American Bar Association and other places.

So, it seems to me that simply looking at expectations, work expectations, as a function of the experience of the previous generation and not analyzing the attitudes of the reward system and the expectations of the workplace, vis-a-vis this population, falls dangerously short.

Have you seen both historical and contemporary analyses of the relationship between the investments

that women make, if you would, in preparing themselves for work and those expectations of the work force?

DR. GOLDIN. Yes. Sure. Thanks. That piece of this paper on expectations is a small part of work that I've done on it, and I do not impose as simplistic a framework. All I was saying was, as an empirical fact, the National Longitudinal Survey did ask questions in the 1960s and then in the 1970s of their young females who were between 14 and 24, asking them questions about what they were going to do when they were 35.

Unfortunately, the questions changed over time; so did the answers, and we're not quite certain whether the answers changed because the questions changed or the answers changed because the people changed.

But be that as it may, it turned out that in 1968, the answers were consistent with the most simplistic framework of expectations, the one that you just talked about.

I don't believe that that's the model of expectations that's going on. But, indeed, the data for 1968 point to that. They point to the fact that the very young women are looking to their elders and saying, "That's what I'm going to be like," and that there is a study which indicates that their investments were severely reduced because their expectations were of that form, that they started in jobs that may have paid a fair amount, but didn't have very much on-the-job training.

I have estimated a model for the last 90 years which, in some sense, produces an estimate of what these expectations are under various circumstances. I agree with you that one has to have more in some sense rational expectations than the very simplistic models that I have imposed here. But it was imposed because it was consistent with these data from the National Longitudinal Survey.

However, the more recent survey of this young woman sample indicates that their expectations not only have advanced with female labor force participation, but they're higher; that, indeed, their expectations as to what they were going to do at age 35 exceeded what they, in fact, are doing right now.

So, in fact, they have revised upward I think, perhaps because we are in a society which makes it very apparent and very obvious that this tremendous change is taking place.

COMMISSIONER RAMIREZ. But as I understand your analysis—

DR. GOLDIN. Yes.

COMMISSIONER RAMIREZ. —one of the reasons for the continued disparity in relative earnings for men and women is that there are older cohorts of women who remained under a set of expectations—

DR. GOLDIN. Right.

COMMISSIONER RAMIREZ. —that interact, but both may have been developed on the basis of the experience of their elders, but may also have been very realistic reflections of what actually was happening in the workplace for women. So that, in fact, those sets of attitudes which relegated women to not participate in the on-the-job training or to not expect to stay with a company for very long—

DR. GOLDIN. Yes.

COMMISSIONER RAMIREZ. —because they weren't going to get anywhere, that those conditions in the work force may have, in fact, been at the cause of those cohorts who continued to occupy places in the work force where they are not compensated at the same rate as men.

DR. GOLDIN. I think you pointed to definitely a very sticky and difficult point in trying to separate out individual choice from societal and labor market constraints. I think that that's very important.

CHAIRMAN PENDLETON. Thank you.

Commissioner Berry, and then we'll have some other questions.

COMMISSIONER BERRY. Miss Goldin, just two fast questions, maybe three. What were the earning disparities between black women and black men, and black women and white men in 1890 and 1930 and 1950 and the other dates that you—

DR. GOLDIN. I haven't done those. But, I mean, the data difficulties are enormous. I think it's the only way in which you can do that, and, in fact, in some sense I did do it for certain areas in 1870 and 1880, and these are the problems.

You can get occupational distributions for black women, black men and white women and white men, but you can't get wages by race. These wages are because—certainly in 1890, the differences in region are very, very strong. The occupations that most blacks had in the South—it's going to be very difficult to get very specific wages. I mean, you're getting a very, very large number of agricultural workers.

COMMISSIONER BERRY. How about 1930?

DR. GOLDIN. It's something that can be looked into, but I think that in 1930 you still have—I mean, even for 1930 I had to construct these series from

very, very basic elements. We do not have aggregate earnings data in 1930.

COMMISSIONER BERRY. Well, what percentage of the samples that are discussed in your paper—

DR. GOLDIN. Yes.

COMMISSIONER BERRY. —are black women?

DR. GOLDIN. Which sample?

COMMISSIONER BERRY. These various cohorts?

DR. GOLDIN. I have about 20 samples.

COMMISSIONER BERRY. The various cohorts in 1890. Any of them. I mean just generally.

DR. GOLDIN. Well, for the—

COMMISSIONER BERRY. Do these data apply with equal force to black women? That's all I want to know.

DR. GOLDIN. I think that the black women are a very, very special part of the female labor force and must be discussed separately.

COMMISSIONER BERRY. I just wanted to make sure. So that—

DR. GOLDIN. Let me just say that I got into studying women in the labor force because of my interest in black women, which came out of my interest in a book that I wrote on slavery. So that's how all this evolved.

I always felt that black women were very difficult to study. The data sources were not as easy to come by, because black women—I think if there was discrimination against women in the United States, it was certainly against black women.

I mean, what you find in the urban centers of the American North, for example, in 1890 are white immigrant girls in factories and black girls working with their mothers as servants.

COMMISSIONER BERRY. Well, I only asked, my—

DR. GOLDIN. So, the occupational distinction is so tremendous that if you want to get the first estimate of what this number is going to be, just take the ratio in the service sector and use it, and that's it, or take the ratio in the farm sector and use it, because there are no black women doing anything in this period of time in manufacturing, not until much, much later.

COMMISSIONER BERRY. Is it your understanding that the labor participation rates for black women in 1890, 1930, and the like were higher than similar labor force participation for white women?

DR. GOLDIN. Considerably higher. There is no doubt about it.

COMMISSIONER BERRY. Okay. Well, my only reason for asking the question was not to be critical. I mean, I understand the data problem, but just to point out and to make sure that I was correct that mostly what is in the paper does not apply with equal force to the conditions of black women at these particular times, and we should not draw inferences which automatically apply to them. Is that correct or incorrect?

DR. GOLDIN. I think in some sense it's incorrect. I think that I'd like to hold my comments. I think that the reason that it's somewhat incorrect is because I think that if any labor force was transformed by educational advances, it had to have been the black female labor force, because they were in the labor force while white women, adult women, in this early period of time were not in the labor force. I think that that really has to be isolated and studied separately.

As I said, I came to this studying that, and I left it because it's a big and difficult question.

COMMISSIONER BERRY. I hate to do this, Mr. Chairman, but this is an important point. I'm sorry—

DR. GOLDIN. Yes.

CHAIRMAN PENDLETON. Yes. I want you to keep on, because I got something on it, too.

COMMISSIONER BERRY. The labor force, if labor force participation and life cycles, if I've got the language correct, are very important in terms of the analysis that is done—

DR. GOLDIN. Right.

COMMISSIONER BERRY. —it would seem to me that if you look to the group that had very high labor force participation at a certain time, and if you could infer or approximate or do whatever economists do, the earnings ratio, it might tell you a whole lot about what to expect from other kinds of labor force participation later and that that would be a very good example if you have the data.

DR. GOLDIN. Yes.

COMMISSIONER BERRY. But I'm not being critical. I just wanted to make sure that we did not, without being careful, assume that all of this included black women, Hispanic women, all kinds of women, and that we understood the limits of the particular data that were here. That was all.

DR. GOLDIN. Yes. I think that your point is an extremely good one, that we have a group of laborers whose life-cycle labor force participation was extremely high, but whose occupations were the worst that could possibly be imagined.

They stayed in occupations where there was very, very little change in their earnings over time. But, of course, the same thing was true for black men. So

you can take the ratio, and the ratio is going to look just the same as for whites.

COMMISSIONER BERRY. But you don't know what the black men-black women ratio looked like.

DR. GOLDIN. I sure do.

COMMISSIONER BERRY. Well, what did it look like?

DR. GOLDIN. The first approximation—

COMMISSIONER BERRY. I asked you that in the first question.

DR. GOLDIN. —is just to take the—

COMMISSIONER BERRY. What was the ratio?

DR. GOLDIN. The first approximation would be to take the ratio in the service sector, where all I have to do is get the shares for you broken down by race. That's all.

COMMISSIONER BERRY. I'd like to see that.

DR. GOLDIN. I shouldn't say that's all, because that's not very easy. Indeed, it's interesting. In 1890 and 1900 in the U.S. Government, there was tremendous concern with what females were doing, and that's where we have a lot of these data. shall I say, broken down by age and sex.

It reminds me of a T-shirt that my demographer friend has that says on the back of it, "Broken down by age and sex."

If we do get these things broken down, then I think that your first best guess is going to be just to look at part *B* and go across on the service or the farm sector, which is the same, because I'm using the same data, and you can see that the ratio of black female earnings to black male earnings is going to be approximately the same as white female to white male.

But it's the black female to the white female and the black male to the white male that's going to be very different.

COMMISSIONER BERRY. That we don't have, right?

DR. GOLDIN. Okay.

COMMISSIONER BERRY. I have one last question, Mr. Chairman.

DR. GOLDIN. Sure.

COMMISSIONER BERRY. Miss Goldin, assuming without arguing, assuming without arguing the point—

DR. GOLDIN. I'm willing to assume anything.

COMMISSIONER BERRY. —assuming without arguing the point about whether jobs are similar or not, since you're focusing on individual characteristics and not jobs, so let's just assume without arguing that if a person can prove that a job is similar, if a person could prove that—is there anything in your paper that supports the notion that employers can pay a person less if the wage is based only on the sex of the person involved? Is there anything in your paper that supports that notion?

DR. GOLDIN. No.

COMMISSIONER BERRY. Okay. I just wanted to be sure of that. Thank you.

CHAIRMAN PENDLETON. If I could just follow up a little bit on what Commissioner Berry is saying, and we were talking about differentials in blacks and whites, and you raised the issue about expectations.

I guess from a policy point of view, I guess economic policy, if you will: Can black women expect to be a part of the comparable worth situation as you outline it based upon the historic situation that they face? Is this one that includes them or does the data that you have say that this is one that purely applies to those people, predominantly whites, if you will, to make that case, who have had the advantage of the training and what-have-you and have different levels of expectation and have different reasons for going in and out of the work force?

Can black and minority women expect to be carried into the mainstream with this phenomenon?

DR. GOLDIN. I would think so. I would certainly hope so. I think that black women are an extraordinary group, as we know from the number of black women in Congress that have always been in politics and in high places.

That's not to say there isn't a very large group of unskilled women. But I think that black women, for the longest period of time, more than white women, recognized that they could take their place in the labor force along with the black men and along with the white men.

Certainly the data for the most recent period indicate that the ratio of black female earnings to black male earnings is higher than it is for white females versus white males, if that's of relevance to the question.

CHAIRMAN PENDLETON. And for black females and white females.

DR. GOLDIN. That's right. Yes.

CHAIRMAN PENDLETON. In some cases.

DR. GOLDIN. I think once again—and let me end with another quotation from Sidney Webb and say that Sidney Webb said in 1891 that these differences in earnings "might be largely removed by educa-

tion. . . ." He then added, "and [by] combination among women themselves." But he was a Socialist.

CHAIRMAN PENDLETON. But it seems to me that we might be in that same spot, from what you say, in 1991 that we were in 1891.

DR. GOLDIN. I think it certainly does add a bit of humility, doesn't it?

CHAIRMAN PENDLETON. There are some staff questions, I guess.

MR. DISLER. If no other Commissioner had any, I had one.

COMMISSIONER DESTRO. I had one, if I may.

CHAIRMAN PENDLETON. As you see, we are not going to have a break. We're just going to go right on so we can move to the next panel. We'll take the break when people feel the urge.

COMMISSIONER DESTRO. Dr. Goldin, you indicated in your paper that the doctrine of comparable worth is predicated on the notion that it's easier to measure the characteristics of jobs than to measure the characteristics of individuals. That makes a lot of sense from a practical standpoint to me. But could you address the question of easier for whom and easier for what end?

DR. GOLDIN. I'm not quite certain easier for whom and easier for what end. It seems to me that from my reading of the legal literature and from my reading of the document from the National Academy, that cases that are brought under the doctrine of comparable worth utilize the skills of individuals who go into the workplace, and say I'm going to rate this job and I'm going to give it a ranking from 0 to 1,000, and then these rankings are utilized in these regression equations to indicate whether an individual can come and say, "Look, I'm of equal ranking in my job to this person and, yet, our salaries are very, very different."

It seems to me that this is an incorrect way of using these rankings, just like it would be an incorrect way to use a ranking of an individual, you see, because this ranking is a scalar. It's a single number. But it's being built up from a vector, from a whole set of numbers. The question is how do you rate this vector to get this scalar. The way in which you weight it at one period of time may be very different from the way you would weight it at another period of time. Or it may be, indeed, that the way that you weight it for one job may be different from the way you might weight it for another job in a region that's different.

So, it seems to me that it is, in some sense, convenient. It may be that particularly since the passage of the 13th amendment that it is repugnant to give such weights to humans, but we give these weights to jobs.

Now, I am not quite certain exactly why it is done this way. It is the reverse of what economists generally do. But it seems to me, easier for whom? Perhaps easier for everyone to accept people going around and saying this job has a scalar of 56 rather than saying that you have a scalar of 52.

COMMISSIONER DESTRO. Okay. The last follow on is that don't the factors that you have identified as the framework that you have studied, when you're rating a job, become what you call unobservable? If you give a crucial weight to the job evaluation, you don't look at all to the other factors, and those just become the unobservables, which may influence the coefficient, which is then assigned to the sex differential.

DR. GOLDIN. Right. I mean, it could be that. For example, let us say that we have school teachers, and these are in some sense the most obvious cases. The most obvious cases have always been, once again, since the time of Sidney Webb, cases that involved the government. Indeed, the reason that the British were one up on the Americans 100 years ago was because they had a much bigger government.

Let's say that we have a high school and we have male teachers and female teachers, and the male teachers happen to be paid more than the female teachers, but they are ostensibly doing the same work and someone comes in and gives them this identical scalar. The question is: Is it unobservable? Is it the case that only male teachers can walk into the boys' room and catch these kids doing terrible things, and that you must have a certain number of male teachers? Males are—their opportunity, of course, in the labor market is higher, therefore, they must receive a higher wage. Then we have to ask: Why is their wage higher in the outside labor market?

But the unobservable here will be this aspect of the job which the person who comes in and gives it this scalar isn't going to know about. I think it's as simple as that.

COMMISSIONER DESTRO. Why wouldn't they know about it?

DR. GOLDIN. Well, I think it is just a Catch-22. If they knew about it, it would be in there. There are things that might be unobservable. There are unob-

servables, of course, in individuals. Someone might just have much, much better intrinsic ability that is not easily measured, not easily measured by someone who comes in to give them a battery of tests. It might come out over a period of time in the labor market, or it may be very obvious to supervisors over a period of time. Or it might be that a large group of women in a factory want the advantage of having jobs that are more flexible.

I mean, these may be unobservables. We may see this differential. We may be able to hammer away and hammer away and still have this little stone remaining of our residual, and we say, "Well, is this discrimination?" And we might say, "Well, what of the 'unobservables'?" There are a whole set of unobservables that we're trying to hack away at.

CHAIRMAN PENDLETON. Ms. Chavez.

MS. CHAVEZ. One can infer from the longitudinal survey data that you cite that women in earlier decades had certain expectations about their labor force participation that were in part based on their modeling after their mothers, and in previous decades it was not illogical for a woman to assume that, like her mother before her, she may drop out of the labor force for a certain number of years for childrearing.

The longitudinal survey data you referred to in your oral comments a few moments ago suggest that, in the most recent years, women have overestimated their labor participation rates at age 35.

To what extent can we infer or are there actual surveys done to show what effect the biological clock has on women, and are there studies which, in fact, test women's expectations not just at age 25, but at age 30 and 35 and on which that whole biological clock would, in fact, have a bearing?

DR. GOLDIN. Right. I think I'd be able to answer this question better after next October, when I'm involved in looking at sets of data, more recent sets of data, that might get into that.

My answer right now—other people in the room may have a better answer for this—is I don't know of any good survey data that ask this question. Indeed, even the National Longitudinal Survey, which is one of the two major panel studies in the United States, asks the question in an inconsistent fashion over time, and, thus, the data might be not as good to use and robust as I have tried to employ them.

So, there are these problems, and I agree with you that we would rather have had much better information on expectations. It may be that there are small surveys, not national surveys, not surveys that were done with as much care as this one was, that isolated a single group of individuals and asked them these questions. I don't know of them right now, and I think it would be important to have them.

MS. CHAVEZ. Just one followup question. Is there any data for relatively recent times on the number of years that married women tend to drop out of the labor force? Has this figure changed much over the past several decades, or has it remained constant?

DR. GOLDIN. I think it would have to have declined over—it must have declined over time. Indeed, one of the interesting things about the data that I present in that figure is that for many of these cohorts, rather than women in their—let's say their married years, being in the labor force when they are married and then dropping out and then coming back into the labor force and then dropping out, these lines are upward rising. What it says is that particularly for cohorts born, let's say, between 1890 and 1930 or so, these women quite frequently dropped out of the labor force upon marriage or just very, very soon thereafter and reentered much, much later on. In fact, the period that they spent outside the labor market was extremely long. That, of course, must definitely have reduced over time.

MR. DISLER. My question was asked.

CHAIRMAN PENDLETON. Okay. If there are no other questions, thank you very much, Dr. Goldin, for spending time with us.

DR. GOLDIN. Certainly.

CHAIRMAN PENDLETON. We'll take just a short break to assemble the next panel or panels.

[Recess.]

CHAIRMAN PENDLETON. May we reassemble, please? Now that we have had the various functions, I would ask that we reassemble.

We will now move to panel number one. Our consultation's first panel will examine why certain jobs continue to be dominated by males and others by females. It will also address why an earnings disparity exists between working women and men, whether discrimination plays a role in this disparity, and what effect, if any, equal employment opportunity laws have had.

Participants on this panel are Dr. Andrea Beller, assistant professor in the Department of Family and Consumer Economics at the University of Illinois. Welcome.

Dr. Brigitte Berger, professor of sociology at Wellesley College; Dr. Paula England, associate professor of sociology and political economy at the University of Texas at Dallas; and Dr. Solomon Polachek, professor of economics at the State University of New York at Binghamton.

Is Dr. Polachek here?

DR. ENGLAND. He was.

CHAIRMAN PENDLETON. He was. Thank you.

The oral presentations will be as follows: Dr. Beller, Dr. Polachek, Dr. England, and Dr. Berger.

You thought that you would not be first, Doctor?

DR. BELLER. I thought I was going to be last since I was last on the program.

CHAIRMAN PENDLETON. That means you're first. The last shall be first and the first shall be last. But, anyway, that's the order of presentation, and we may now begin.

Excuse me. I guess most of you were here during my earlier request of the panel; that is, we would like for you to take about 20 minutes to discuss an overview of what you are giving us in the paper. If, during that 20 minutes, you prefer to take some time to raise some questions or issues about the other panelists' papers, you should feel free to do so during that time period. We don't think you should be constrained if you have an urgency to make some comments.

After that time, then we will have some questions from my colleagues and from the staff in terms of the Staff Director and the General Counsel. Okay?

DR. BELLER. Okay.

CHAIRMAN PENDLETON. Thank you.

PANEL: OCCUPATIONAL SEGREGATION AND THE EARNINGS GAP

Statement of Andrea Beller, Assistant Professor, Department of Family and Consumer Economics, University of Illinois—Urbana

DR. BELLER. This paper that I wrote for the session addresses the following questions: What is the relationship between occupational segregation and the male-female earnings gap?

If occupational segregation is due to discrimination, to what extent do equal employment opportunity laws reduce that discrimination?

Third, why do some occupations continue to be male and others female?

Finally, what are the implications of relying on changes in the occupational distribution to reduce the male-female earnings gap?

First, what is the relationship between occupational segregation and the male-female earnings gap?

Much of the earnings gap between men and women can be explained by occupational differences rather than by unequal pay within the same occupation. There are many studies by economists that have shown this. That earnings and occupational segregation are related is demonstrated by the empirical finding that earnings are about 30 to 50 percent higher in traditionally male occupations than in female or integrated occupations. Differences in hours and weeks worked and in human capital measures, such as education and training, between individuals in male occupations and in the other occupations cannot explain the entire differential. Percent of the earnings difference between male and other occupations remains unexplained after you control for the productivity-related measures that we can measure.

The model of discrimination, originally developed by Bergmann, can explain why wages would be higher in male occupations than simply due to productivity-related factors alone. This explanation says that discrimination against women in certain occupations acts as a barrier to their entry to those occupations and results in fewer women being hired. Not only will those occupations become male dominated, but the decline in the demand for women relative to men will tend to lower the earnings of women.

The restrictions upon entry of women into the male sector force them, if they wish to find employment, to crowd into the occupations that do not discriminate against them. These become female dominated and they become overly crowded with women workers.

This crowding tends to push wages down in this sector because it's an excess supply; a lot of people looking for a limited set of jobs tends to reduce the wages of those people. It is this fact, that discrimination causes the wages in the female sector to be below what the market level would be for wages in that sector, that provides the basis of an argument for comparable worth.

Now, competing with the discrimination explanation for the occupational differences that we observe is the explanation based upon choice, women's choice, a human capital-based explanation developed by Professor Polachek. He argues that incentives to enter various occupations differ between men and women, and they differ because of planned

differences in labor force participation over the life cycle. He says women will choose to enter those occupations where their earnings losses will be minimized for their anticipated absences from the labor force for childbearing and childrearing.

Clearly, on the surface both of these theories are persuasive, and they are not mutually exclusive. That is, they can both be true at the same time, and they can both explain a portion of the gap. So it remains basically for empirical testing to try to attempt to sort out the relative validity, the relative explanatory power.

The empirical evidence for Polachek's explanation has not been very impressive. Results in a study that I did show mixed evidence on that choice hypothesis. Let me just correct something that Professor Polachek presents in his paper here. He selectively quotes from my article, and he quotes the things that I find that are consistent with the human capital hypothesis, and he neglects the other part of what I said, so I feel I should read that here now.

The entire paragraph that he quotes from begins, "Are the estimated regression coefficients on the labor supply variables in the direction predicted by the sex role differentiation human capital approach to occupational segregation? The results are mixed."

Then he quotes the results that are consistent. Then I go on to say, "But single women are only slightly more likely, around 1 percent, than married spouse present women to be employed in nontraditional occupations, while other marital status groups are not more likely. Contrary to prediction, the probability that a working woman is employed in nontraditional occupations, that's a male-dominated occupation, increases as the number of children increases, by 0.4 percent per child."

The human capital model would predict the opposite, that the greater the number of children, the less likely a woman would be employed in a nontraditional occupation.

Another thing that he says that is not accurate about my research is, "Simple comparisons of the magnitudes of the discrimination and human capital coefficients are taken to yield a direct measure of how much each factor contributes to the likelihood that any individual is employed in a male occupation." This is not correct.

The first way I test this hypothesis is by comparing the estimated coefficients in the regression model to the predictions of his model, and I find mixed results.

The second way is to assess the overall contribution of the model by asking the question of whether the human capital model explains well which women enter male occupations and which women do not. I say that the answer would have to be that it does not. First, the human capital model does very poorly in differentiating those women who are in the male occupations and those women who are not in male occupations.

I also show that even if women had the same labor supply characteristics as men, that is, they had the same number of weeks worked, the same hours worked, the same proportion working part time, the same marital status (this is a kind of decomposition that economists like to use), their probability of being in a male occupation would increase only very slightly from what it is now.

So, changing women into men as far their labor supply characteristics are concerned, as far as the variables that affect lifetime participation, would not improve their situation as far as being in male occupations very much. It would improve their probability of being in a male occupation by between 0.4 and 1.6 percent, something like that. That's what I did do in that article.

Another thing that you would expect to find with Polachek's hypothesis is some evidence that women who entered the female occupations would earn more over their life cycle than if they entered male occupations. There has been no evidence on this point. Nobody has shown this to be the case.

Other evidence has been—there are several other articles that have been even less favorable to his hypothesis, one by England, and I think that she'll be discussing that.

But another paper that I recently came across I think is very critical, and I think it addresses the point that Commissioner Ramirez raised earlier. According to results by Reuben Gronau, it is not women's own intentions to drop out of the labor force that explain why women invest less in on-the-job training, but, rather, it is "the lack of investment opportunity owing to employers' expectations that they will drop out of the market."

Now, this is not just a statement. He had a whole empirical study that differentiated these two hypotheses, and he showed this, convincingly to me.

What happened as a result is that women's lower wages caused them to make plans to drop out of the labor market. It was not their plans to drop out that

affected their wages and the amount of investment that they made.

On the discrimination hypothesis, as has already been mentioned, we cannot measure discrimination directly. We simply don't have a measure. It's typically the unexplained residual in an earnings regression, where we measure as many productivity-related factors as we can, and these productivity-related measures typically account for less than a fifth of the earnings difference between men and women. In those studies that have explained the most, one by Mincer and Polachek, and one by Corcoran and Duncan, they still explained less than half the earning difference between men and women. No study has explained more than that on the basis of productivity-related factors.

One can say that there are unobservables, as Claudia Goldin has said, but for them to add much to this explained portion, they would have to be uncorrelated with the measures we already have in. Their explanatory power would only be the difference between how correlated they are with the variables we already have in. In my view, even if we could measure everything else, we would not explain the full gap, but this is a matter of opinion.

Now, I used an indirect measure of discrimination in a study of mine. I looked at the effects of enforcement of equal employment opportunity laws, and I argued that if EEO laws were successful in narrowing the sex difference in the probability of being in a male occupation, that was evidence of initial discrimination in the first place; that is, if firms responded to the investigation and prosecution of complaints by changing their behavior, then, at least as defined by the courts, that suggested that there was discrimination in the first place.

This leads me to the second question. If occupational segregation is due to discrimination, to what extent can/do equal employment opportunity laws reduce that occupational segregation?

Antidiscrimination laws provide incentive for change in discriminatory behavior by making discrimination more expensive to employers. Therefore, Title VII could potentially reduce discrimination against women in employment, and that would tend to reduce occupational segregation.

Firms who were violating the employment provision of Title VII, that is, nondiscrimination in hiring, promotion, may come into compliance by seeking to hire more women in those occupations. This increases the demand for women relative to men and tends to increase the employment of women relative to men and/or to raise their relative wages. So, equal employment opportunity laws would just reverse the effect that discrimination creates. So, Title VII is well designed to reduce the occupational segregation.

Now, what have the actual effects been? First, let me say that it is difficult to study the actual effects of Title VII. I have done several studies, and there have been a few others, but very few, because it is difficult to study this.

According to my empirical work, Title VII has significantly narrowed occupational segregation. Title VII increased a woman's chances compared to a man's of being employed in a male occupation. Its enforcement narrowed the sex differential in the probability of being employed in a male occupation by about 6.2 percent between 1967 and 1974 and by about 8.3 percent by 1977.

Also, Title VII narrowed the sex differential in earnings by about 7.1 percent between 1967 and 1974. The gains were largest for the youngest cohorts, and college-educated women appear to have benefited most from equal employment opportunity laws over this period.

CHAIRMAN PENDLETON. You have 2 minutes, Doctor.

DR. BELLER. Two minutes?

CHAIRMAN PENDLETON. Yes.

DR. BELLER. Well, I guess I didn't time this very well, then. Let me see. Where am I?

Okay. Even if Title VII continued to work at this rate, it would take about 75 to 100 years to eliminate the gap between men and women in occupations. Then there are several modifications on that as to whether that may be a little overestimated or a little underestimated.

Why do some occupations continue to be male and others female? Actually, there has been considerable change during the 1970s. There's been considerable desegregation of the occupational distribution over this period. Younger cohorts have benefited considerably more than older cohorts. There has been greatest change in white-collar occupations, consequently for college-educated women.

There has also been considerable change in college majors of women over this period.

Now, given this, you would expect to see a narrowing in the male-female earnings gap. You don't see it because of competing factors. There actually has been an increase in the relative earnings

of younger cohorts of women, and there has been a decrease in the relative earnings of older cohorts of women. Older cohorts of women continue to crowd into the same occupations and perhaps crowd more than they did before. And these competing forces leave no change in the earnings gap between men and women.

What if we rely on changes in the occupational distribution to diminish the earnings gap? What would the situation be like?

Well, the women who are presently members of older cohorts are seeing absolutely no benefit, although younger women are moving into nontraditional occupations and toward narrowing the earnings gap. It is these older women who, in their lifetime, will see no change in their labor market position and who may be suffering the effects of discrimination. It is this population that, it seems to me, serves as the basis of an argument for comparable worth: The older cohorts of women crowded into traditionally female occupations are receiving no benefit in terms of their wages, which may be lower than they would be in the absence of discrimination. It is these sets of arguments that would provide the basis of an argument for comparable worth.

CHAIRMAN PENDLETON. Thank you. Dr. Polachek?

We will save questions until after all four panelists have presented. So jot them down.

Okay.

Statement of Solomon William Polachek, Professor of Economics, State University of New York, Binghamton

DR. POLACHEK. Chairman Pendleton started off the discussion by discussing gender inequality, which seems to be rampant throughout this economy and other economies as well. He stated that occupational differences exist between men and women and are rampant. Also, he stated that wage differentials exist between men and women to the tune of about a 40 percent gap.

The question that he raised was: Is it true that discrimination is the culprit of the differences in the inequality which exists and to what extent is discrimination the cause? If it exists because there are barriers to entry for women into certain occupations, then what would happen if we did not have these barriers? That is, what would happen if this occupational segregation which came about would not exist? What would happen to the level of inequality between men and women?

What I do in this paper is try to answer some of these questions, and I would like to make four points in my answers to these questions. What I'll do is state these four points and then I plan to go back to the tables and the charts in my paper to try and illustrate why I believe in the four statements or the four conclusions that I am going to make.

First of all, I hope everyone has the paper so I can illustrate some of the gender differences to which Chairman Pendleton alluded.

In my table 1, I illustrate occupational segregation, the difference in the male-female occupational distribution. It is obvious that men predominate in certain occupations. It is obvious that women predominate in others.

COMMISSIONER GUESS. Mr. Chairman, could you get the page number?

DR. POLACHEK. I am on table 1 at the end of my paper and shall just note two sets of numbers.

For example, in managerial occupations, there are about close to 15 percent men and 7 percent women. Why?

In service occupations, there are 20 percent women, only 9 percent men. Why?

Next, if we go on to table 2, we could find that there are wage differences between men and women. If we look at median money income by race and by sex, we find out that the gap in earnings, that is, the female to male income ratio, is actually below the 60 percent that was alluded to, the unadjusted earnings for the year. It is closer to 40 percent. That is a 60 percent gap in earnings, but the gap is smaller between black men and black women.

If we adjust for hours, that is, if we look at a weekly wage, then we get the 60 percent figure for whites. We get a 70 percent figure for blacks. That is, the gap in earnings between black men and black women is 30 percent. The gap in earnings between white men and white women is more like 40 percent.

Now, what some people have done, and what Andrea Beller has alluded to, is a theory by Barbara Bergmann, namely, the crowding hypothesis. The crowding hypothesis claims that there is a link between these two tables. The link is discrimination, discrimination by firms. Firms do not permit women or other minorities into certain occupations, thereby forcing women into a select few menial occupations, resulting in an increased supply of women in these

occupations, thereby driving down the wages compared to men.

This hypothesis is called the crowding hypothesis and is sometimes referred to as the occupational segregation hypothesis. It forms the basis for trying to overcome this discrimination through a comparable worth procedure.

The question, then, is: How important is this occupational segregation hypothesis in explaining the wage gap? The way to answer this question is by a question, and the question is: By how much would the female wages change if females had a male occupational distribution? Or, how much would the male wages change if males had a female occupational distribution? That is, if we invert the distributions, could we explain away the gap in wages?

The answer to this question is we don't explain away very much of the gap in wages.

If we turn to my table 3, I have a computation which indicates the explanatory power of this occupational segregation hypothesis. This is illustrated on the bottom line of that table. The answer that I obtain is that occupational segregation explains, at best, between 9 to 12 percent of the gap in wages.

So, just in a nutshell, let me just state before I go on to do the remaining tables my first major conclusion: Occupational segregation is not an explanatory factor for wage differences in the economy. Shortly, I shall go through the tables a little bit more to explain why.

If occupational segregation is not an explanatory factor in explaining the wage differential, then what is? The second major conclusion I have is that the gap in wages between men and women can be explained by gender differences in lifetime labor force commitments. In fact, I'll illustrate a little bit later that differences in lifetime labor force commitment explain at least 45 percent of the gap, not the 9 to 12 percent explained by occupational segregation and, if done correctly, can actually explain almost 100 percent of the gap in wages.

The third conclusion that I am going to come to is that not only do differences in lifetime labor force participation explain differences in the wage gap between men and women, but they also can explain some of the occupational distributional differences to begin with. If it is believed that differences in the occupational distribution are the causes of differences in wages, then at least part of this difference in occupational distribution is caused by differences in lifetime labor force participation.

Some people claim that I claim that discrimination doesn't exist. The fourth major conclusion that I am going to come to is that this accusation is not true. I claim that discrimination can exist. But I claim that discrimination exists not because the market doesn't work, but because often the market is not permitted to work. If we want to combat any kind of discrimination that can exist, the way to get at that is to alleviate factors in our economy that do not permit the market to work effectively.

Now, those are the four major points that I want to make. I started to go through some of the tables illustrating the first point, namely, with respect to the importance of occupational segregation as a determinant of wages. I got as far as table 3, which indicates that occupational segregation explains between about 9 and 12 percent of the gap in wages.

I am not the only one who performed this computation. In a book that received much attention, namely, the one by Don Treiman and Heidi Hartmann, a similar computation was performed, and that is on table 4. And if you look at their numbers, when they look at the importance of occupational segregation, they find, in dealing with a narrow occupational classification, between 3—that at the third to the bottom line in that table—between 3 and 11 percent of the gap in wages is explained by occupational segregation.

When one has 222 occupations, one explains between 11 and 19 percent of the gap in wages by occupational segregation, which is very much akin to the computation I performed.

When one uses as many as 500 or 479 occupations, to be exact, one obtains up to 39 percent of the gap explained by occupational segregation.

But the problem in using all those occupations is that there is a question as to what these occupations really mean. Are we really measuring job levels, which is really a proxy for wages to begin with? If so, that may be why we have as much as 39 percent explanatory power. Further, these numbers do not adjust for levels of education, levels of skill in terms of experience, or other factors which should determine wage.

For these reasons, other scholars have used an alternative methodology to measure the importance of occupational segregation. This is by means of regression analysis through the use of a percent female variable in the regression. The question asked

is: By what amount would female wages increase if women were in jobs which were, say, 100 percent male as opposed to 0 percent male, or 67 percent male as opposed to 33 percent male, as is the case in the population?

If you use that approach, only 5 to 6 percent of the gap in wages can be explained by occupational segregation. The bottom line is that occupational segregation does not have very much explanatory power in determining the gap in wages between men and women.

If occupational segregation doesn't explain the gap in wages between men and women, what does? What I have done is I have looked at some data, and I have taken these aggregate male-female wage ratios and I tried to break them down further. I disaggregate these grossly aggregate wage differentials.

I start with marital status by looking at sex wage differentials in different marital status groups. I find something very dramatic. I find that the gap in wages between married men and married women tends to be very large. It is in the magnitude of 60 percent. But if I look at the gap in wages between single men and single women, it's very small, varying from 0 percent to 15 percent.

So, if that is the case, and discrimination is the culprit, then why is discrimination different between the married group versus the single group? Why is there only a very small wage gap between single men and single women versus a very large wage gap between married men and married women? Why?

Further, one can take other demographic measures. If I take families which have many children and widely spaced children, the gap increases further. So then, what is it about marital status and what is it about these demographic variables which have so important a power in explaining the wage gap?

The answer is interesting. If one turns to figure 1 in the paper, what I have done is plotted out in a graph form the labor force participation rates of these different marital status sex groups. Married women have the lowest lifetime labor force participation pattern. Married men have the highest lifetime labor force participation pattern. Single males and single females have lifetime labor force participation patterns which are roughly comparable.

What does this mean? Perhaps there is a link, and maybe there is a link between lifetime labor force participation and observed wages. In fact, if one plots these wages, they exactly match the labor force participation profiles. Put differently, lifetime labor force commitment appears to be a very important variable in explaining the gap in wages.

Some studies try to measure the importance of lifetime labor force participation in explaining the gap in earnings. They test something called the human capital hypothesis. They need not call it a human capital hypothesis, but that is the appropriate jargon. The studies that Professor Beller alluded to explain about 45 to 50 percent of the wage gap.

First of all, 45 to 50 percent is larger than the explanatory power of even the best occupational segregation models. Recall that the occupational segregation models explain as little as 5 percent and as much as 39 percent, if one uses 500 occupational categories.

The weakest human capital type models explain at least 45 percent of the wage gap.

But even these human capital models that explain 45 to 50 percent of the wage gap are not even done correctly, and hence obtain underestimates of the explanatory power of the human capital model. If one looks at figure 4, one could illustrate why these human capital models do not adequately get at the question.

Figure 4 plots out on a graph a typical life cycle. There is a period *E–1* of initial experience, a period *H* depicting that portion of the life cycle when a large segment of the female population drops out of the labor force, and then there is a reentry period, *E–2*.

There are some letters in this figure. The *B*, which is right after the *H* period, is earnings that women have upon reentry to the labor market. There is also a *D*, right above the *C*, which is the gap in earnings that studies measure via a typical human capital approach.

The fact is that the human capital model doesn't predict only a *B/D* gap. The human capital model predicts a gap that is *B/K*. Current studies do not measure the full gap, and the reason current studies fail to measure the full gap is that these human capital models or these tests of the human capital models do not take into account expectations, which was brought up in Claudia Goldin's talk. They do not account for the fact that when people have an expectation of dropping out, they choose different type jobs to begin with. In fact, they choose different type college majors, and they choose

different type courses even as early as high school and before.

Thus, the true gap that the human capital model would predict is not *B/D*, but *B/K*. Current models fail to measure the *B/K* gap.

Now, there is one model that I know of that tries to capture this expectation, and that is a model that I explored back in 1975. But it is a very technical model, so that many would unfortunately shy away from the mathematics. Nevertheless, it shows that if we appropriately adjust for these expectations, and I do this in table 8, we achieve a human capital test that can explain 97 percent of the gap in wages between men and women. That is indicated in table 8.

Now, some might be skeptical of this strong a result. So what I did as a check is look not at sex differences in earnings, but at marital status differences in earnings. We know that married men earn much more than single men, and we know that single women earn much more than married women.

The question then is: Can these differences in my measures of lifetime expectations explain away the gap within a gender category by marital status? It turns out in table 9 that I could explain 82 percent of the gap in wages by marital status for men, and I can explain 75 percent of the gap by marital status for women. These are large numbers.

It turns out that these lifetime labor force expectations also have power in explaining occupational differences between men and women. If we go on and look at some of the other tables that I have, it turns out that intermittency explains much of the difference in occupational distribution. For example, if women had full-time labor force participation, my models predict almost a doubling or a 50 percent increase in the number of women in professional and managerial type occupations. Similarly, it predicts a halving of the number of women in the menial service type occupations. What I am saying is that lifetime labor force expectations explain occupational segregation as well.

All this doesn't mean that I think discrimination does not exist, because I think discrimination can exist. But I think discrimination manifests itself in what we call societal type preconditioning. It manifests itself because there is a division of labor in the household. It turns out that by and large husbands specialize in market activities, and wives specialize in nonmarket activities. That's why there is such a divergence in the earnings and occupations of married women compared to single women.

So now, why has this come about? Part of it comes about because there are some implicit taxes on married women working. There are some incentives for married women not to partake in the labor force. Part of it is due to government and part of it is societal preconditioning which exists from way back.

One form of discrimination that could exist is a societal form of discrimination, and part of it can come about because there are certain type government policies which create incentives for women not to be in the labor force full time, marriage taxes and also, say, unavailability of day care.

One other force of discrimination, namely, blatant firm discrimination that we alluded to in the first part, can also exist. But if firms have a profit motivation and if firms can hire a woman or anyone else that can do the same job at a lower wage, then it pays for them to hire the low-wage worker who can provide an equal output. Why? Because it can enhance its profits. If it doesn't, some other firm will come in and drive out of business the firm that doesn't behave in an efficient way.

But there are firms that do not behave efficiently. Why? Because there are some reasons that exist in the economy for inefficient type firms. There are some firms which are not profit motivated. These could be nonprofit firms. These could be firms in the government sector. These could be regulated firms. We find that when we get rid of certain types of regulation, we reintroduce competition and create greater and greater competition, so there is less incentive to discriminate. In fact, even in the case with respect to the wedge that unions created in wages, the deregulation of the airline industry, for example, drove out the wedge of pilots' wages. Now airlines, like Continental, can undercut the union wage for pilots, and that's the story.

CHAIRMAN PENDLETON. Thank you very much. We'll now move to Dr. England.

Statement of Paula England, Associate Professor of Sociology and Political Economy, and Center for Policy Studies, School of Social Sciences, University of Texas at Dallas

DR. ENGLAND. Thank you.

First, I want to clear up a mystery that Professor Polachek is suffering under. He is wondering why it is that single women make almost as much as single

men. If there's discrimination, surely this wouldn't be the case. He's always telling us we should adjust for human capital. In fact, on average, single women are more highly educated than single men. So what's extraordinary is that they don't make higher earnings than single men.

DR. POLACHEK. They do in some cases. They do at later ages. The older single women make more than single men.

DR. ENGLAND. So we don't know if it's enough more to compensate the extra education.

Anyhow, that aside, I am a sociologist by training, but as I have done research and teaching on this subject, segregation and the sex gap in pay, I have come to the conclusion that it's very important to try to blend information from sociology, economics, and psychology if we're really to understand what's going on here.

What I am going to try to do today is give you an overview of research in these three areas that bears upon two basic questions: How do we explain occupational sex segregation and how do we explain the sex gap in earnings? Those are the two questions I will address.

Now, explanations of both segregation and the gap in earnings tend to be broken into supply side and demand side explanations. Supply side explanations refer to the choices or qualifications of employees. Demand side explanations refer to the behavior of employers.

I'm going to argue to you today that this is not an either/or proposition, that the explanations of the sex gap in outcomes come partly from the supply side, the premarket factors, the family, etc., and partly from demand side behavior of employers. There is no either/or situation here. They both influence each other reciprocally.

Let me start with explanations of job segregation by sex, and let me start with the supply side. I think one important factor creating job segregation is sex-role socialization. Studies are still showing that little kids at the age of 5 have already figured out that the girls are supposed to be nurses and teachers and waitresses, and the boys are supposed to be firemen and construction workers and managers, etc.

Psychologists have a couple of different ideas as to how this socialization occurs. One notion emphasizes reinforcement. Kids are reinforced for these traditional choices.

Another branch of thinking in pyschology emphasizes cognitive learning. The idea here is simply that kids look around them. They are not stupid. They see that some jobs are done mostly by women. Some jobs are done mostly by men. They conclude that that's the way things are and that's the way they are supposed to be, and they make their own plans accordingly.

That suggests that the biggest single thing we could do to change how kids are socialized would be to change the occupational sex segregation of adults, because that's essentially the data that kids use in their cognitive socialization.

So, sex-role socialization influences segregation. The other prominent supply side explanation of segregation that's been offered is the human capital theory, and Professor Polachek is a prominent proponent of that. I am going to argue to you that human capital theory does not explain much of occupational sex segregation at all.

On the other hand, I will later tell you that I do think it explains some of the sex gap in earnings, some but not all.

Now, let me try to summarize how it is that we disagree on this point. The simplest human capital explanation of segregation would say that we know that, on the average, men have more labor force experience than women; women have been out of the labor force longer. Maybe there are some jobs that you can't get into unless you have a lot of experience, and so we're less apt to see women in those jobs than men. Good enough. That probably does explain the exclusion of women from certain jobs that you just can't get into unless you have a lot of seniority.

But that really doesn't explain the bulk of segregation, because, in fact, at entry level, when, remember, men and women are equal, having 0 years of experience, jobs are very sex segregated, even today. Jobs are less segregated today in the entering cohorts than 10 years ago, but still very sex segregated.

Furthermore, research has shown that women with very continuous labor force experience are virtually no more apt to be in a predominantly male occupation than women who have had very intermittent participation. So, if experience were explaining it all, why don't we see the women with continuous experience being much more apt to be in the male occupations?

Now, Professor Polachek has answered that with a more sophisticated rendition of human capital theory that points not just to one's experience, but to

one's plans for experience and the way in which they affect the choices one makes. It's a very complicated argument. The best way that I can summarize it for you is to say that Polachek has argued that for those people, mostly women, who plan intermittent participation, to drop out, in, etc., it will pay them in an economic sense, that is, they will maximize their lifetime earnings, if they choose occupations that have relatively high starting wages, and have low wage depreciation when you are out of the labor force.

That's a reasonable hypothesis. But research that I have done and some others have done seems not to bear it out. That is, predominantly female occupations, the occupations women are going into, do not have relatively high starting wages compared to male occupations that require the same amount of education, nor do they offer women lower depreciation rates than the women would find if they went into male occupations.

So, my own research and that, I think, of several others suggest that women lose economically by choosing traditionally female occupations over the life cycle. They don't gain as the human capital thesis would suggest.

While I'm saying this, could I point out one very critical typo in my paper to you? Please make this change if you happen to have the paper, because the typo reverses the meaning of something. If you happen to be looking at the paper on what I think is your page 9, there is a middle paragraph that starts out, "Although Polachek's thesis is deductively plausible." The last line of that paragraph says, "choosing male jobs." That should read, "choosing female jobs."

That is, the sentence should read, "Thus, there is no pecuniary advantage to women of choosing female jobs." So since I reversed my meaning by my typo, I wanted to straighten that out.

So, to the extent that segregation is explained on the supply side, I think the factor of sex-role socialization is more important than Polachek's human capital theory about lifetime plans for women being different and that affecting their occupational choices.

What about the demand side? What about demand side explanations of segregation? Well, of course, the important explanation we have here is discrimination, and this seems to be this elusive thing that we can never measure. Unfortunately, we are never going to get a number where we can say, well, *X* percent of the segregation comes from choices and *X* percent comes from discrimination. I wish we could calculate that number, but we can't, because we never have data where we have got all the information we want. We don't have what the people's preferences were and what their qualifications were and what the employers did to screen them.

The question is: How can we approach this, figuring out to what extent there is discrimination in men and women getting into jobs? Andrea Beller has provided one approach by looking at the effects of enforcement.

Let me tell you about another approach to this question. That is surveys of managers. Managers hire people and make personnel decisions. So some industrial psychologists have suggested research that asks managers what they do.

A number of studies have either asked managers their impression of male and female workers or asked them more directly: Here is a hypothetical personnel decision. What would you do?

A number of such studies find very compelling evidence of discriminatory attitudes and managers saying that they would make discriminatory personnel decisions. Of course, they don't use the word "discriminatory" to describe their actions.

I am particularly struck by a study carried out at the University of North Carolina School of Business by Rosen, where over 800 managers were surveyed. One of the things those surveyed were asked to do was take different traits and tell whether they thought these traits were more common among male employees or more common among female employees, and there was a middle of the scale where you could say that the trait was no more common in either males or females.

This study was conducted after 1972, in a time of ostensible liberation. Those answering the survey on average evaluated men more highly on understanding the big picture of the organization, approaching problems rationally, sizing up situations accurately, administrative capability, leadership potential, setting long-range goals, and standing up under fire.

Women were rated more highly on the following traits by these managers: clerical aptitude, being good at detail work, enjoyment of routine tasks (I like that one), timidity, jealousy, and excessive emotionality regarding their jobs.

Now, you might say that these are just attitudes. You might say, surely these managers know about EEO laws and so they don't use these attitudes when

they make their personnel decisions. This study and others went on to give the managers and others surveyed hypothetical personnel decisions to make. It found that managers were more apt to select a hypothetical applicant for a demanding managerial position when the applicant was male than female, given identical descriptions of qualifications. They were more apt to recommend a male than an identically described female for a prestigious training conference, and more apt to terminate a female engineer for excessive absences than a male engineer.

While this evidence again is somewhat indirect, it does suggest to me that we still do have some sex discrimination out there in hiring and placement. Now, I would be the first to say that I think this discrimination has declined radically in the last 10 years. But these data are from the last 10 years, and so I think that there is some of it still out there.

Let's turn now to explaining the sex gap in pay. The first point I want to address is the link between segregation and the sex gap in pay. I fear, again, here, Sol Polachek and I are just going to confuse you so terribly because we seem to disagree on everything. I want to argue with Andrea Beller that segregation has everything to do with the sex gap in pay.

Now, if I can help you cut your way through this confusion in the battle of the experts here, I think really the only difference between what Professor Polachek is saying and what I'm saying hinges on how detailed an occupational classification one goes to. That is, I think we all agree that if you take very broad occupational categories, you'll find that more of the total sex gap in pay comes from men and women within the same occupation getting paid different amounts and less comes from men and women being distributed into different occupations.

If you go to a more detailed occupational classification, you will find that a greater share of that sex gap in pay comes from men and women being distributed into different occupational categories. Women always seem to end up in the lower paying ones. With a more detailed occupational classification, not so much of the gap comes from differences in pay between men and women within single occupations.

Now, I guess where we disagree is whether it's appropriate to use more and more detailed occupational classifications. It seems a semantic question. If what we mean by a job is a specific, pretty detailed occupation in a specific industry in a specific firm, then we haven't even begun to go to the level of detail in our measurement of jobs that is really out there in the work force. I agree with the economist Victor Fuchs who said this "about" or "exactly" 10 years ago, that the further we press the occupational classification, the more we'll find that there is virtually never a man and a woman sitting in the same firm doing exactly the same thing in the same industry getting paid different amounts. Now, they sometimes are, and that's how we get Equal Pay Act cases. But it's really a small part of this total sex gap in earnings. So, I think segregation has everything to do with the sex gap in pay.

It follows, then, that the explanations I've just offered for segregation are also explanations of the sex gap in pay. That is, sex-role socialization and the demand side discrimination in hiring and placement that I argued to explain segregation also help explain the sex gap in pay.

However, once we have men and women segregated into these different jobs, I think there are two additional factors that contribute to the sex gap in pay. Let me address those two in turn. One is a supply side factor and one is a demand side factor.

On the supply side, we have our old friend human capital. It is, indeed, the case that differences in the labor force experience of men and women do explain some of the sex gap in earnings. I think we all agree on that. We seem to disagree on what explains the rest of the gap.

I think that the most definitive study on this is one by Corcoran and Duncan. Actually, it comes up with a similar estimate to the Mincer and Polachek study in 1974. So, take whichever one you want, but what I like about the Corcoran and Duncan study is that they used a very elaborate list of human capital variables, including how many years of labor force experience you had before your present employer, how many of those years were part time versus full time, how many years you have been with your current employer, divided into how many years with your current employer included training versus how many were just years of experience without training, and whether you have plans to quit your job for a nontraining reason. So they are including some expectation variables and also something about absences for family reasons.

I would submit to you that this is about as thorough a list of human capital attributes and plans that we're ever going to get. Using all of that, they

find that all of these variables explain about 45 percent of the sex difference in earnings between white men and white women. Then they compare white men and black women, and they say it explains about 30 percent of that gap.

Let's not bicker about the exact number. All of these things are estimates. The point is that sex differences in employment experience are clearly a factor in the sex gap in pay.

Now, I don't know of this study that Professor Polachek is telling you about that purports to explain 95 percent of the sex gap in pay with human capital variables. I strongly suspect that it's voodoo economics, but I'm going to go home and read it. You can write me a letter and ask me what I think after that.

One thing I would point out, though, about this human capital study of Corcoran and Duncan is that one of the things that was going into this 44 percent was how many years in your present job did your employer provide you with training. It turns out that men have a higher level there than women. Now that could be itself from demand side discrimination. That is, maybe the employers won't put women in the jobs where they are going to give training. So even some of that 44 percent of the sex gap that Corcoran and Duncan attributed to human capital would be explained by demand side discrimination.

The final factor that I'm going to discuss influencing the sex gap in pay is the sort of discrimination at issue in comparable worth. Once we have men and women in these segregated occupations, regardless of whether they got there through supply side or demand side processes, we need to ask how these different occupations get compensated.

We know that excess supply or demand affects wages. If there is an excess supply, wages go down. If there is an excess demand, wages go up.

We also know that, in general, the skill levels and educational requirements of jobs affect their wages. A number of studies have tried to get at this comparable worth question by doing an analysis where we take occupations rather than people as cases. The studies use regression analysis to explain earnings across occupations. They put in variables measuring an elaborate array of the skill demands of occupations, not just our old friend education, but also measures of manual skills, social skills and cognitive skills, education, and some other things. Such studies find that predominantly female occupations are not only paid less than male occupations, but they pay less than one would predict them to pay based on their skill characteristics.

This finding appears in virtually every study that I have seen on the subject. Studies come up with models that explain upwards of 75 percent of between-occupation differences in earnings. But if we enter a variable for the percent female of the occupation, it has a net negative effect on earnings.

One 1982 study of which I'm a coauthor explained something like 30 percent of the sex gap in earnings—this was among full-time year-round workers in 1970—by this net effect of percent female. In other words, the extent to which predominantly female occupations paid less than was commensurate with the skills and education they require explained over 30 percent of the 1970 sex gap in pay.

Thus, I think that the evidence is strong that there is a form of sex discrimination in the allocation of wages to jobs; that is, if a job is done by females, the wages tend to be set lower than can be explained by the skill level of the job.

A lot of people have said that comparable worth hinges on crowding. I don't agree with that. I may be the only person in the country who thinks that female occupations are not necessarily crowded. Because there has been such a huge increase in demand for labor in the jobs that are traditionally female, I think this demand has "sucked" women into the labor force. Thus, as women poured into the labor force they haven't crowded female jobs. I think that crowding does not explain the lower pay of female jobs. Rather, I think that employers, by custom, have said that if a job's done by women, they're going to pay it less. Those differentials have been perpetuated over time.

My time is up. Let me very briefly summarize, then. I have argued that segregation is explained primarily by sex-role socialization and by demand side discrimination; that the sex gap in pay is explained by segregation and, to a certain extent, by differences in labor force experience of men and women. As a third factor, the sex gap in pay is explained by this type of discrimination in wage setting that is at issue in comparable worth.

Thank you for your attention.

CHAIRMAN PENDLETON. Thank you. Dr. Berger, you have waited patiently and have heard lots of testimony and now it's your turn.

Statement of Brigitte Berger, Professor of Sociology, Wellesley College

DR. BERGER. As a sociologist with a strong theoretical background, who has done much of her work for 30 years of her professional life in the areas of social change, modernization, and the role of individual values and social values, all of this, I feel, on this panel, like the proverbial rabbit that has unwittingly fallen into a lion's den of economists, lawyers, and the like. I'm, therefore, particularly grateful to the Commission that a different perspective has been given a chance to be heard.

The issue before this Commission, as I see it, revolves around discrepancies that follow from the persisting occupational segregation of women in today's labor market and, along with it, the seemingly intractable gap in the earnings between men and women, on the one hand, and the aims and guarantees of the civil rights acts of the 1960s to do away with pernicious discrimination on the basis of race, color, religion, gender, and national origin, on the other.

Now, these measured discrepancies—and there is no doubt about this, that they are real—have the potential for developing into one of the most divisive social, economic, and political issues in the years to come. Hence, it is of enormous importance that great care be taken in the understanding of the many dimensions of the issue that has entered into the public discourse under the label of comparable worth.

In the paper I prepared for the Civil Rights Commission I have attempted to focus on three aspects that, to my mind, have not so far received sufficient attention, aspects that tend to be shoved under the rug conveniently.

The first aspect has to do with the frame of reference or general methodology.

The second aspect, which constitutes by far the bulk of my paper, deals with the role and the meaning of work in the life of women in contemporary American society.

The third aspect is concerned with the unintended consequences of those attempts that seek to base the value of work on educational credentials.

Finally, in my concluding arguments to the paper, I briefly argue that the real or imagined discrepancies in the earnings gap between men and women be resolved within the political and legal avenues that already exist in an open democratic society like ours.

Permit me, then, to turn to these three major points. The first is concerned with the frame of reference used. In view of the extraordinary economic, political, and social implications of the comparable worth proposition, I propose that we must take it beyond the narrowly defined economic context in which it is commonly discussed today.

This is not to say that economists and job evaluation experts have not and cannot make important contributions to the clarifications of the issue. But in their more or less one-dimensional focus on a very complex issue, they tend to abstract primarily economic aspects from a profusion of individual practices, motivations, and values.

To a sociologist like myself, all issues, be they now political, economic, or individual, have to be located within the broader structures and within the larger context of society. To lift any social phenomenon out of the broader structures in which it is embedded and disregard the meanings a particular phenomenon holds, for the individuals participating in it, means to reduce it to an empty form from which all life has been drained.

From the mounting number of publications on comparable worth, we do not learn much about the life and hopes of the millions of women who have joined the labor force today. Instead, we learn about abstract problems of measurements, market mechanisms, performance evaluations, and the like. But after the methodological onion has finally been peeled, if, indeed, it can be peeled, and after the arguments for the establishment of an abstract notion of justice have been settled at last, we still know little, if anything, about the way in which ordinary American women seek to order their lives, the things they value and they cherish.

In sum, my argument here is that before any governmental action can be considered, it is vital to understand the motivations and values of those whom the comparable worth measures are supposed to benefit.

This takes me to my second point, the role and the meaning of work for women in the labor market today. The dimensions of the mass migration of women into the paid labor force since World War II are too well known to be repeated here. The reasons for this dramatic change have been and continue to be many. But an argument can be made that women turn to the labor market above all out of a desire to make a contribution to family income.

The available evidence indicates that the mass participation of women in the labor force has to be largely viewed in terms of economic self-interest, if not economic necessity. As women moved into the labor market, they encountered long-entrenched, massive discriminatory barriers.

The civil rights acts of the 1960s sought to eradicate these barriers. There is little doubt that these congressional acts have been of beneficial value. In the past few years, impressive evidence has emerged that women have begun to avail themselves in ever larger numbers of the new job opportunities as well as of opportunities for occupational mobility. Census data, commission studies, individual academic research, and the like reflect the rise of women in the traditional male bastions of management, law, and medicine.

A brief look at the current enrollment figures in law schools and medical schools provides further evidence that this trend continues today in full force. At the same time, however, there also exists impressive evidence that certain categories of jobs in the market are predominantly held by women. It's precisely this persistent adaptation of women to historically defined female job categories, such as nursing, school teaching, secretarial and clerical work, and service work, that is the basis upon which the argument for comparable worth stands or falls.

The question that arises for us here, I think, is: Why have women not availed themselves more of the opportunities that have been created on their behalf?

I think it's wrong to argue on the basis of biology as many today are inclined to do. Women have aptitudes and interests in technology and those crafts from which they are conspicuously absent today to the same degree as men do, and quite a proportion of women dispose of physical strength and energy comparable to that of men as well. The reasons why they are reluctant to make greater use of the opportunities in these typically male careers that have increasingly opened up to them since the 1960s have to be sought elsewhere.

On the basis of a great number of data, I think a strong argument can be made that although women are committed to participate and stay in the work force, they are even more committed to values and practices that center around marriage, children, and family.

Summarizing a good number of recent studies, it can be said that for the vast majority of women, some 92 percent, family life, a life that includes children, husband, and a household, is of paramount importance. To some 86 percent of them, the family is the single-most meaningful aspect of life, in contrast to the barely 9 percent who in 1979 claimed that work was the most important aspect of their lives.

Moreover, recently conducted studies—such as those on the use of flexitime, on the career aspirations of high school girls and college students, and evidence of a more or less anecdotal kind, as well as evidence based on demographic statistics on the life-cycle patterns of those highly educated career women who entered into their careers in the 1970s—altogether these many studies attest to the fact that for the vast majority of women something more than a successful career is needed for what they hold to be a full and meaningful life.

From a plethora of evidence on the values and commitments of American women, the April 1984 data on the rise of the two-income family released by the U.S. Census Bureau deserves special mention. For what these and similar data demonstrate above all is that millions of married women and particularly those with small children went to work in order to supplement the family income. To meet the very real economic needs of their families, millions of women today are engaged in a heroic balancing act between the demands of the family and the demands of the workplace.

For most, there is little doubt where their priorities lie and why they are engaged in this seemingly superhuman struggle in the first place. It is for reasons of the priority of the needs of their families that women have been primarily drawn to those types of jobs that offer opportunities for part-time and flexitime work schedules. By the same token, they are drawn to precisely those types of careers that permit easy exit and reentrance and that, thus, can be reconciled to their larger life plans, life plans which involve children and family.

In sum, my argument on the relationship between women and work is decidedly different from that of the proponents of comparable worth. Failing to recognize that the majority of women continue to look on the family as the most significant and lasting factor in their lives places the proponents of comparable worth into a position that, to my mind, is oddly removed from American realities.

In the heat of the argument, they are falling prey to an exaggerated ideology of work that is difficult

to sustain under close examination. One may consider the strong preferences American women give to their families irrational and misguided. But who is to decide upon life priorities in a world that appears to become ever more complex and uncontrollable?

This takes me to my third and final point. It is an aspect of the comparable worth debate that has been largely ignored up to now. It is an aspect which, to my mind, is one of the most divisive points in the future. It has to do with the unintended and, to my mind, objectionable consequences of giving greater weight to educational credentials and the yet to be established system of job evaluations.

The aspect I wish to emphasize here leaves aside the question of whether one would want to establish such a regulatory system in the first place. I leave the debate on these questions to those better equipped than I to analyze.

Within the context of my paper, the argument is taken into a different direction. The search for a job evaluation model that is hoped to be more equitable to women has led comparable worth advocates to legitimatize the argument for increased earnings in traditional female job categories by placing greater stress on educational credentials. Now, this is not accidental, for there exists currently a trend that women today, in contrast to the past, spend on the whole more time in educational institutions than men do. The claim is made that the educational factor has not received sufficient recognition. Now, this factor is likely to be a major one in the argument for determining the comparable worth notion.

In arguing for awarding higher value to educational credentials, however, I think that comparable worth activists fall prey to a credentialing bias that has little to do with the value of work as such. If this vision should take hold and become the accepted definition of the value of work in America, a blatant antiblue-collar and antiworking-class bias will be introduced under the guise of justice and equity.

In this, comparable worth entails an implicit irony. It is supposed to benefit women workers, and, in fact, it discriminates against the poorest and neediest among them. When all is said and done, comparable worth, if carried out, would benefit in the main the type of white-collar credentialed jobs in which women predominate. In turn, it would discriminate against that large category of manual and service jobs that are the only opportunity for making a living for a substantial portion of American men and women.

For those who are concerned with the plight of more than 40 percent of inner-city young and not so young who in Bayard Rustin's term are unemployed and unemployable, the comparable worth notion is a difficult notion to accept.

Lest I be misunderstood, let me emphasize once more that my exposition of the credentialing bias contained in the comparable worth argument does not in any way imply that the market is fair or that any one of the occupations under discussion does not merit higher pay. On the contrary, I think a good case can be made for the financial upgrading of quite a number of job categories, regardless of the gender issue.

In a democratic society, like ours, there exist all sorts of opportunities and avenues for this purpose that can and should be utilized. They range from the politics of unions to those of occupational associations. What I am firmly opposed to, however, is arguing a financial upgrading of occupations on the basis of gender discrimination. Such efforts, aside from being based on wrong premises, entail, to my mind, grave consequences for the fabric of American society.

CHAIRMAN PENDLETON. Thank you. You have some time left. Do you have anything else?

DR. BERGER. No. Thank you.

CHAIRMAN PENDLETON. Thank you.

DR. BERGER. I think I have said enough.

CHAIRMAN PENDLETON. Thank you. We'll take a little break and come right back. Is that okay? Can we spend just a minute or something? Is that all right with you, Dr. Bunzel?

COMMISSIONER BUNZEL. That's fine.

[Recess.]

CHAIRMAN PENDLETON. Can we reassemble, please? There are many Commissioners who have some burning questions.

We will start the questioning with Vice Chairman Abram. We try to ask that we not have other studies or other reports as they ask the questions. Perhaps we can ask the questions and get the answers so we can get everybody's questions in within the time frame that we have, which is about an hour.

So, if we could be as kind as Commissioner Berry and ask those questions and get those answers, I think we will be able to get to everyone.

Vice Chairman Abram.

VICE CHAIRMAN ABRAM. Dr. Beller, would you state that the following factors are legitimate factors

in compensation, education, bearing in mind it, too, may be irrelevant in some occupations?

DR. BELLER. Bearing in mind what?

VICE CHAIRMAN ABRAM. That it, too, may be irrelevant in some occupations, the degree of education, bearing in mind, that is a factor; isn't it?

DR. BELLER. Yes.

VICE CHAIRMAN ABRAM. Skill?

DR. BELLER. Yes.

VICE CHAIRMAN ABRAM. Length of service?

DR. BELLER. Yes.

VICE CHAIRMAN ABRAM. Continuity of service?

DR. BELLER. Yes.

VICE CHAIRMAN ABRAM. Motivation, including the need to work?

DR. BELLER. Motivation, I'm not sure that—

VICE CHAIRMAN ABRAM. Well, a person who is well motivated—we heard some figures. The reason I ask this, we heard some discussion of the fact that married men apparently make more than single ones, and that suggested to me that—I may be wrong—that there is some compelling need for a man with a family to produce more than a man without. Do you agree that compelling need factored into motivation may be a just basis for compensation?

DR. BELLER. Not in and of itself, no, not unless the person is more productive and would be worth more as a result.

VICE CHAIRMAN ABRAM. But motivation, does it have any relationship to productivity?

DR. BELLER. It doesn't?

VICE CHAIRMAN ABRAM. Does it? I'm asking.

DR. BELLER. Well, it may in and of itself. It wouldn't be necessary.

VICE CHAIRMAN ABRAM. So then it may be of—

DR. BELLER. In and of itself it wouldn't be necessarily.

VICE CHAIRMAN ABRAM. But the answer is it may be or it may not be a factor. What about the ability to move, mobility?

DR. BELLER. Mobility tends to be related in some ways.

VICE CHAIRMAN ABRAM. Yes. Now, there are seven factors as I have listed them. Would you say that differentials, wage differentials, based on the differences in those seven factors or any one or two or all of them, if the differentials are based on those factors, are the differentials proof of discrimination?

DR. BELLER. If wage differentials—

VICE CHAIRMAN ABRAM. Are based on either one or all seven or any number of those factors—

DR. BELLER. No. If they are explained by those factors, then that's not related.

VICE CHAIRMAN ABRAM. Right. Then are those factors not proper components in judging equality, whether there is equal pay or not?

DR. BELLER. Yes, those are proper components.

VICE CHAIRMAN ABRAM. And the failure to pay equally for equal work is discrimination; isn't it?

DR. BELLER. I'm not following you.

VICE CHAIRMAN ABRAM. Does failure—

DR. BELLER. Can you ask one full question rather than—

VICE CHAIRMAN ABRAM. Failure to—

DR. BELLER. I'm not used to being cross-examined. I'm sorry. I can't answer these chopped-up questions.

VICE CHAIRMAN ABRAM. Usually thought to be one of the best.

CHAIRMAN PENDLETON. Unfortunately, you are on the lawyers' turf right now.

DR. BELLER. Well, I have never been in court.

VICE CHAIRMAN ABRAM. All right. I'll move to another.

DR. BELLER. I can't follow them.

VICE CHAIRMAN ABRAM. I would like to ask, if these seven factors are, as you have said, either singularly or in combination, legitimate bases for differentials in pay, why should we expect a one-to-one ratio of earnings by groups when they may vary in respect to one or all seven of these components?

DR. BELLER. We don't expect a one-to-one ratio.

VICE CHAIRMAN ABRAM. All right.

DR. BELLER. If there are statistics.

VICE CHAIRMAN ABRAM. Right. Have you ever run a comparison of the male-female ratios taking all of the above determinants into account?

DR. BELLER. All except the motivation, yes, I have. And there was an unexplained earnings differential of about 30 percent that could not be explained by those factors.

VICE CHAIRMAN ABRAM. Did you take mobility into account?

DR. BELLER. No, I did not.

VICE CHAIRMAN ABRAM. You didn't? Did you take—you said you didn't take motivation into account?

DR. BELLER. No.

VICE CHAIRMAN ABRAM. Are you familiar with the famous *XYZ* case, which was reported in a scholarly journal some time back, arising out of the failure of persons, I think who were working for

Delta Airlines, to be moved or willing to be moved from city to city? Are you familiar with that work?

DR. BELLER. No.

VICE CHAIRMAN ABRAM. You are not? Should society, in your judgment, reward equally all who have the seven components that we have described a moment ago in equal degree?

DR. BELLER. I don't—

VICE CHAIRMAN ABRAM. Well—

DR. BELLER. I can't answer that directly. I mean, people have different degrees of education and—

VICE CHAIRMAN ABRAM. Well, suppose they had all of the seven in equal degree or however you measure them. Should society have a right to compel equal pay for persons who have those equal qualifications?

DR. BELLER. I don't know what you mean by "compel." The market would tend to reward those qualifications equally if there were no discrimination.

VICE CHAIRMAN ABRAM. Fine. That's fine. You would rely on the market?

DR. BELLER. I would rely on the market if there were no discrimination, yes.

VICE CHAIRMAN ABRAM. Right. Now, you have pointed out that Title VII legislates, and if it's properly enforced, and God knows there is an apparatus to be sure that it is and the courts have been very diligent in my experience, but if Title VII legislates and the judiciary does its function with existing legislation to place women into formerly male bastions, and if in those bastions equal pay makes pay equal as between men and women working in the same bastion, then may I ask you what more can the government be expected to do?

DR. BELLER. Okay. Let me see if I understand what you're asking. You're saying if Title VII or the other equal employment opportunity laws move women into nontraditional jobs—

VICE CHAIRMAN ABRAM. And equal pay takes over.

DR. BELLER. —achieve equal pay for it, what else should the government—

VICE CHAIRMAN ABRAM. Should the government do.

DR. BELLER. —should the government do. I guess that's the question of this hearing, and I feel that I contributed evidence to the best of my knowledge on the subject. I don't think I can answer the question until the end of the hearing.

VICE CHAIRMAN ABRAM. Okay.

Professor Polachek, I listened to you. I got the distinct impression that if there is discrimination, it is against marriage, the condition of marriage. You seem to indicate the figures certainly demonstrate that. Is that right?

DR. POLACHEK. Well, I stated it is a question.

VICE CHAIRMAN ABRAM. Right. Well, if that's the case, and you seem to have a good deal of feeling or evidence about it, should we legislate that married women should be paid equally with single women?

DR. POLACHEK. Definitely we should not.

VICE CHAIRMAN ABRAM. Regardless of their length of service or seniority or anything else, since the discrimination is in marriage?

DR. POLACHEK. Definitely should not.

VICE CHAIRMAN ABRAM. Legislate against discrimination by virtue of marriage, forgetting everything else?

DR. POLACHEK. We definitely should not.

VICE CHAIRMAN ABRAM. All right. I think those were all the questions I have, Mr. Chairman.

CHAIRMAN PENDLETON. You came off the roll. Commissioner Ramirez, do you have questions?

COMMISSIONER RAMIREZ. I'll wait.

CHAIRMAN PENDLETON. Commissioner Guess.

COMMISSIONER GUESS. I have a question for Professor Beller, and I can assure you I'm not a lawyer, so you don't have to worry about a cross-examination. As a matter of fact, Professor, I heard the other day that scientists are thinking about replacing white mice with lawyers for experimentation for two reasons.

VICE CHAIRMAN ABRAM. So long as they pay them equally.

COMMISSIONER GUESS. Well, the two reasons they want to replace these white mice with lawyers are, first, there are a whole lot of lawyers and, second, you don't become as attached to them.

[Laughter.]

COMMISSIONER GUESS. Looking forward to that myself.

VICE CHAIRMAN ABRAM. Mr. Chairman, that is a significant statement.

COMMISSIONER GUESS. Professor Beller, one question I have. It is a straightforward question. Are there any studies that tend to suggest that the pay differential between men and women narrows when there is a female owner or employer or policymaker setting the pay scales?

DR. BELLER. I don't know.

COMMISSIONER GUESS. Does anyone?

DR. ENGLAND. I don't know.

DR. BERGER. Usually female employers are tougher than males.

COMMISSIONER GUESS. So then, in the absence of any evidence to suggest that the market does work if—one concludes females also pay females and males that same wage differential?

DR. BELLER. I can't answer that question, but there is some evidence on a related, if you can see the relationship, subject, and this is drawing on sociological and psychological studies. In studies that have been done where people were asked to rate papers written by males and females or articles written by males and females, they would put—sometimes they would put a female name on an article and sometimes they would put a male name on the article. Uniformly, both males and females rate the quality of the work lower when it is done by females, when a female name is on the paper. So, that's a related piece of evidence.

COMMISSIONER GUESS. Mr. Chairman, that is all.

CHAIRMAN PENDLETON. Thank you. Commissioner Ramirez, you're still waiting?

COMMISSIONER RAMIREZ. Yes.

CHAIRMAN PENDLETON. Commissioner Bunzel.

COMMISSIONER BUNZEL. Let me ask just one question quickly, and I'll reserve the right to come back.

CHAIRMAN PENDLETON. You can yield.

COMMISSIONER BUNZEL. Thank you. Dr. Polachek, one question that was brought to my attention I'd like to ask you is based on something you said, namely, that if women were to have a full, uninterrupted commitment to the labor force, the number of female professionals and managers would increase and the number of women in menial occupations would decrease. Isn't it true that a great deal of or even most occupational segregation and wage disparity exists in blue-collar occupations, where perhaps intermittency is not a serious factor?

DR. POLACHEK. Yes. That is correct. Do you want me to expound upon it?

COMMISSIONER BUNZEL. Yes, would you expand?

DR. POLACHEK. Okay. In the evidence that I was citing, we find that the strongest results in terms of the impact of labor force intermittency or lifetime labor force commitment occurs in the professional and managerial occupations compared to the service and household type occupations. Those are the two sets of occupations where the strongest results occur, as you have just said. It is true that we find weaker results with respect to the operative and craft occupations as well as the clerical occupations. Now, the reason for that is that when I talk about the lifetime labor force commitment, I'm talking about a full commitment to work vis-a-vis the family interest in the household. That is, one can work all one's lifetime, but, again, it gets back into the motivation with which one works and associated job characteristics.

Let me give you a couple of examples. There are a lot of characteristic differences between the clerical and the blue-collar occupations that exist. In particular, there are certain job characteristics which are very amenable to having a role in being charged with family responsibilities.

Clerical occupations, for example, are near telephones; clerical occupations have more flex time in terms of hours. Blue-collar occupations are not near telephones, for example. There might be more rigidity in terms of hours and responsibilities. In that sense, part of the motivation, part of the commitment toward family, might indicate or might dictate that one might want to choose a clerical type occupation, where one can be within telephone's reach of one's family in case of emergency, as opposed to, say, blue-collar occupations.

So, I guess the bottom line of what I am trying to say is that labor force commitment, lifetime labor force commitment, is more than just working year after year. It deals with other kinds of characteristics of the job and not just the loss in earnings power if one would drop out. That's just one characteristic.

In a lot of my work I say I deal mostly with that one characteristic, the cost of dropping out, because it's easy to measure. The other amenities of the job, the other characteristics of the job, are harder to measure. This research on occupations is still at the preliminary stages, and we haven't gotten into explaining all the fine nuances of the differences in occupations. Nevertheless, I am sure that reasons exist that can be explained by the market mechanism, which characterize the differences as to why women tend to be more in clerical occupations as opposed to blue-collar occupations.

CHAIRMAN PENDLETON. Commissioner Berry.

COMMISSIONER BERRY. Thank you, Mr. Chairman. I have several questions.

CHAIRMAN PENDLETON. She says she has four pages of questions—

DR. POLACHEK. Four pages.

COMMISSIONER BERRY. But I won't ask all of them.

First of all, if I understood your paper correctly, Ms. Berger, is it the case that you believe that an employer can be expected to pay women less than men, even if the wage is based on a woman's sex, because one understands that women have less commitment to work, more commitment to family, and all the other factors that you cite, and we shouldn't be disturbed by that phenomenon?

DR. BERGER. No. I do think that in the case of typically female occupations, such as nursing, teaching, clerical work, secretarial work, service work, an argument could be made that these occupations as such deserve a higher value than what they are receiving right now, and I'm prepared for this argument.

But I do not think that we can make the argument on the basis of gender discrimination, and I think that gender discrimination is the issue before this Commission.

COMMISSIONER BERRY. On what basis can we make the argument?

DR. BERGER. You could argue, as it is argued, indeed, by a number of people today, that teaching, for instance, is a profession that is of enormous national value, is an occupation that has not drawn the brightest and the best, an occupation that needs front line supplementary pay. You could make those and other kinds of arguments. All right. I'm prepared to entertain those arguments and am even inclined to support some of their claims. But I do not think that the argument should be made on the basis of gender discrimination. That's a different issue.

COMMISSIONER BERRY. Well, let me ask you this, then: If we assume just for the sake of argument—

DR. BERGER. Yes.

COMMISSIONER BERRY. —that a person could prove that their job, whatever it is, is similar, comparable, the same as, by whatever legal standard of proof they used in court, where they proved it, would you believe that an employer could still say that he should pay a woman less than a man—

DR. BERGER. Of course not.

COMMISSIONER BERRY. —in that same job, just because a woman is a woman?

DR. BERGER. Of course not. We already have the Equal Pay Act of 1963, which we can fall back upon and which we, indeed, should fall back upon. I think a number of women have done this and successfully so. If there exists genuine discrimination, we have to eradicate it.

COMMISSIONER BERRY. To make sure I do understand you, let me ask you one more about that. Would you expect female and male sociologists generally to make about the same salaries as faculty members? Or would you expect female sociologists to make less because they are committed to family and they probably don't engage in as much attention to their work? Or would you expect the salaries of faculty members of sociologists, male and female, to be about the same?

DR. BERGER. Well, let me use my own anecdotal experience. I think I'm very well paid in comparison to my male colleagues, since I'm the chairman of the department and I do make a hefty bit of money.

Now, the question whether I deserve it or not is not the question here. When I compare myself with media personalities, I think I'm highly underpaid.

But back to the question. In general, do we find discrimination practices in terms of gender in setting the wage scale? I have not seen any in recent years.

COMMISSIONER BERRY. If I may interrupt you, that was not my question. My question is: Would we generally expect female and male sociologists and faculty members, according to your analysis, to make different salaries because of their sex?

DR. BERGER. No, I would not.

COMMISSIONER BERRY. All right. I just wanted to be sure about that.

The other point I would like to ask, in your paper, you say that comparable worth emphasizes educational credentials. You also said that here orally. You also say in your paper something to the effect that these proponents want a government-designed and enforced program which would provide comparable worth in terms of job evaluation and all the rest of it. I have been reading through all the papers that we were given for this consultation from both the proponents, or at least they are identified in some cases as proponents, and I haven't seen one yet where they said that educational credentialing was to be the only criterion or the major criterion for determining worth of jobs or that what they wanted was a government-enforced job evaluation system.

Could you please cite to me, since you mentioned this in your paper, so that I may read them, sources where that has been the view of these proponents, who obviously aren't in this consultation?

DR. BERGER. Yes. Let me backtrack. The proponents of comparable worth give us continuous

assurances that this is not their intention. But if you seek to redress a grievance as has been identified here, how can you proceed? You can proceed in terms of historic discrimination. However, I think this is no longer possible because, after all, the civil rights acts of the 1960s have exactly done away with that.

Now, you could argue in terms of the job evaluation models, which are fuzzy, admittedly, on this point.

What are you then left with? You juxtapose different kinds of occupations and look at the ratings they receive. Now you could argue, and some people have gone into this direction in private discussions, though not yet officially, that typically female qualities have been undervalued. For instance, caring, nurturing, smiling, and things of that sort, and I would be the last person to not give any value to this.

COMMISSIONER BERRY. You're smiling. You're smiling.

DR. BERGER. Exactly. I think it's very important. All right. However, Commissioner Berry, on the other hand, I could make an argument, and as a householder I make this argument all the time, there are many male qualities, assurance, calm, which are not found in females to such degree as males usually seem to manifest, that would also deserve higher value. Who is to say what kind of attitudes and attributes deserve higher rating? In the end, all that is left is for educational credentials, and that is something as an educator I am firmly opposed to. I have taught on every level of the educational system and I know what educational credentials mean.

COMMISSIONER BERRY. The last question I have for you, although, unfortunately, Mr. Chairman, I do have some others, you say that comparable worth, this idea would hurt the most needy or something like that, the poorest and most needy people.

DR. BERGER. Yes.

COMMISSIONER BERRY. All the data that we have seen, or a lot of it that we have seen, indicates that the people who might benefit from it had some kind of equal pay for jobs of equal value, however that's determined as a standard; a lot of them might be women who are poor, a lot of female heads of household and the like who are in these jobs that are occupationally segregated and the like.

So, I would like to know what you mean when you say it would discriminate against the poorest and the most needy, many of whom are disproportionately women. What are you talking about?

DR. BERGER. Well, it goes again back to the job evaluation models which I may use here. If, for instance, you compare, let's say, the points awarded to an office manager, female, and a park ranger, male, which are comparable in terms of worth, and then you compare the same job of, let's say, a park ranger and a nurse, which is slightly lower, then you could argue the park ranger has less education. Thus, it all comes back to the question of educational credentials. That's why I'm honing in on this point. The nurse has more education. For that reason, it is now the inclination to argue that she deserves a higher value rating.

COMMISSIONER BERRY. How about a woman who is cleaning—

DR. BERGER. Now—

COMMISSIONER BERRY. —offices after hours and a man who is a maintenance worker in the same building.

DR. BERGER. There is no doubt that the manual working classes in American society have lower educational levels than the nonmanual working classes or white-collar jobs. The manual working classes constitute a large proportion of the population. The future expansion of the labor market is in the direction of service work, that is, manual work.

In other words, if we would use credentialing, and this is my argument, as a new model, we would discriminate, perhaps unintentionally, against manual work. This may not be the intention of the comparable worth proponents. Yet, it does have that unintentional effect.

COMMISSIONER BERRY. So that that statement is based on the prior statement—

DR. BERGER. Yes.

COMMISSIONER BERRY. —that educational credentialing is what people would use as a measure, which has to be supported, because I asked about support for that.

If I may quickly, Mr. Chairman, just a question for Miss England and Mr. Polachek. I'll start with Miss England.

I'm very interested in this business about the marital gap or being married having to be the basis for the earnings gap.

CHAIRMAN PENDLETON. Dr. Berry, I don't think we can hear you in the back or the front.

COMMISSIONER BERRY. The marital gap being responsible for the disparities that are seen that Dr.

Polachek talks about, since he says never-married men seem to have almost wage parity with never-married women. In other words, if women didn't get married, I guess they'd be all right or something.

I would like to know what you think about that, Professor England. Is it marriage—

DR. ENGLAND. Are you referring to my point about the earnings of single women compared to single men?

COMMISSIONER BERRY. And his about women who are married being worse off than women who are not married.

DR. ENGLAND. Okay.

COMMISSIONER BERRY. And about never-married men. I just want to know what your—

DR. ENGLAND. Right. First of all, oftentimes those who are trying to convince you that there is no discrimination left in the labor force and that all of these differences in pay are explained by human capital expectations, etc., will try to make that argument by pointing to the nearly equal earnings of single men and single women. If single women seem to be doing as well as single men, then there must not be sex discrimination, they claim.

The point is that the factors that select men and women into marriage are different, such that what makes a man marriageable tends to be economic success, and what makes a woman real marriageable I haven't figured out yet, but I think it doesn't have much to do with economic prowess.

CHAIRMAN PENDLETON. Is that discrimination?

DR. ENGLAND. Because of the selection processes into marriage, you see that, on average, single women are disproportionately well educated and have very continuous labor force experience. Single men are disproportionately losers, socioeconomically. (No offense to any single men that might be here.)

Disproportionate among single men are handicapped men, those with low education, high school dropouts, prisoners, the mentally retarded, etc. Those characteristics are not so disproportionate among single women.

So, my point is that if people were paid by their qualifications, we would actually expect single women to have much higher earnings than single men. The fact that they have almost equal earnings to single men isn't a demonstration of lack of discrimination.

Now, to the other point, comparing single women and married women. It's true that single women do much better than married women, and part of that's to be explained by the fact that the married women are more apt to have spent time out of the labor force. That time out of the labor force also is a factor in the sex gap in pay. Polachek and I agree that the differential labor force participation and labor force plans of married women as opposed to single women and, therefore, of married women as opposed to men do explain some of the gap in earnings.

My point was to talk about what's explaining some of the rest of the gap, some of these other factors such as demand side discrimination in hiring and in the allocation of wages to women's jobs. So there is really no contradiction on the point, I think.

COMMISSIONER BERRY. Okay. And if you agree, you don't have to answer that, unless you want to comment, Dr. Polachek.

DR. POLACHEK. Unless I like to talk. No.

I pretty much agree, but I would like to make one important point. The point is that if we have a model that the wage gap exists because of discrimination, what we see here is that we have to go beyond this model of pure discrimination. What Professor England has done is gone beyond this model of discrimination by saying, well, single men have different characteristics than single women, and single men have different characteristics than married men and married women, and so on.

So the question is if discrimination is the argument, it doesn't seem to work equally across all groups. You have to go back to these expectations of labor force commitment to explain it, and that's what's important.

COMMISSIONER BERRY. Okay. Then finally, and I'm through, Mr. Chairman, to Professor England again, when women choose, if it is true, as Professor Berger says, that women choose to go into certain occupations because of their commitments to home and family and all the rest, do they at the same time that they make that choice, choose to make less money?

DR. ENGLAND. I would say no.

COMMISSIONER BERRY. I mean, do they understand that they are choosing to make less money?

DR. ENGLAND. The question was?

COMMISSIONER BERRY. That if women, in fact, do choose, as she says in her paper, to enter certain jobs, occupations, because of their commitment to home and family, which is their priority, if that's all true, do they understand at the same time they are choosing to make less money, or is it just that they

are so dumb that they don't know that, or what's the answer to that?

DR. ENGLAND. I don't know whether they know they are going to make less money in these predominantly female occupations. I think a lot of times they are misinformed about the relative wage levels of male and female occupations and particularly how different they are going to be after 10 years of employment.

But what I thought was underlying your question was do they prefer to make less money. I would say no to that. That is, I see no conflict between the possible fact that a lot of women put their families first and the existence of the sort of wage discrimination at issue in comparable worth.

Supose we have women who are secretaries getting paid less than men who are janitors. Suppose, as Polachek has speculated today, that women want to be secretaries because they can be close to the phone. Now, that helps them. Suppose that that's true. To me that doesn't change the argument for comparable worth one iota. That is, if I have evidence that the employers have set wage levels lower in clerical work precisely because it's women doing the work when these jobs are, in fact, much more skilled than janitorial work, or warehouse work, or dock work or any number of other jobs, then the fact that the employers have made a decision based on sex makes it discrimination.

I think the women would prefer to have higher earnings and be near the phone.

COMMISSIONER BERRY. ...men have their families as a major priority or ... What do the data show on that? Do men, do they ...nd like women do, and Dr. Berger says women ... say that the family is the first priority?

DR. ENGLAND. Yes.

COMMISSIONER BERRY. I don't know whether that's true or not, but that's what she says.

DR. ENGLAND. I haven't seen a comparison of the same question asked to men and women on that. I'm pretty sure that what you would find, based on other data I've seen, is that the trend shows women moving towards more equal priority of work and family. The trend is towards men moving toward that, too, but we aren't there yet. Women are still giving a little more priority to the family than men are. The direction of change is toward a convergence in the relative priority men and women give to home and paid work, but the convergence is not complete yet.

COMMISSIONER BERRY. I'm finished with Mr. Polachek.

CHAIRMAN PENDLETON. Dr. Polachek, maybe you want to have some response to that dialogue.

DR. POLACHEK. Okay. I'd like to go back to a question that Commissioner Berry asked a bit earlier during the presentation of Professor Claudia Goldin. I think the question that you asked had to do with gender differences among blacks compared to gender differences among whites.

I think that some of the tables, or at least one of the tables that I presented—it is not in the historical perspective, of course, but it's a known fact that the gender gap in earnings among blacks is smaller than the gender gap in earnings among whites.

In the data that I have, 77 percent is the wage ratio versus 63 percent. Question: Why?

Well, one reason, if we take my model as at all valid, it would be that the labor force attachment, the labor force commitment of black women relative to black men is stronger than the labor force commitment of white women relative to white men. Sure enough, that's the case, if one looks at lifetime labor force participation profiles.

So, what I was going to say is that the power of this model, of this lifetime labor force expectation model, explains the gender differences in earnings by race as well.

It also explains other factors, too, such as why the gender differences in wage vary by different age levels. In fact, upon reentry into the labor market—that is, when by and large people who drop out of the labor force, women who drop out of the labor force reenter—that's when the wage gap is largest. These models explain that as well.

So, it explains not just a wage gap by marital status, but the gender gap within the race, marital status differences within a gender, as well as many, many other factors.

CHAIRMAN PENDLETON. Excuse me. While we are on the point with you two, I'd just like to ask something. In these days of high technology and the chance to work at home, is it discriminatory, Dr. England, if an employer decides that he wants to in a sense exploit or take advantage of the market, and there are working mothers or mothers who are at home who really want to work to supplement the family income, and they do all kinds of telephone surveys or selling magazines, asking questions and all of that? Men don't really do that. At the same time, a mother gets a chance to be at home and gets

a chance to do all kinds of things in the home environment.

There are some situations that I know of now, especially in California and probably elsewhere, where there are mothers who are pretty good at the computer and programming and work for industry. They go out on maternity leave and have a baby and the employer tends to bring the machine to the house. They are able to manage the family, take care of the baby, and at the same time have some time for work.

Now, it does seem to me that that's not a bad paying job, apparently. There is some value of that job to the employer, and it seems to me that there has been some agreement between the employer and the employee to keep that person employed, at the same time to keep the market forces at work.

I am trying to find out if there may or may not be something discriminatory about that process as you talk about—or your answer to Dr. Berry's questions about women and their tending to want to go one way.

Is that not a way to go one way, to be at work at home? I mean, does there have to be some out-of-the house workplace for women to go to work?

DR. ENGLAND. Well, my answer to your question as to whether such a procedure would be discriminatory is as follows: If the employer is paying the people in this job who happen to be women in accordance with the contribution of this job to the firm, then I would say there is nothing discriminatory about it.

Some women might choose that job at home, and perhaps some men might start choosing to work at home and participate more in child care as well. There is no discrimination there. If, on the other hand, the employer says, explicitly or implicitly (probably not in office memoranda since the *Westinghouse* case), that since these are women, they don't have to be paid as much, then this is discrimination. If the employer sets the pay scale in this job lower than what it would be for men who were doing the same or a comparable job in the office with the same productivity, then I would say it is discriminatory.

In other words, the way I would define comparable worth discrimination is in terms of whether the employer has taken the sex of the people doing the job into account when setting the wage, such that the wage is lower in predominantly female jobs than is commensurate with the contribution of the jobs to the firm. Now, I realize that that's hard to measure a lot of times.

CHAIRMAN PENDLETON. It seems to me my point has been a little bit missed. This is a person who already has a job at an industry and has had to go out on maternity leave. It's not that the employer has knocked on doors—

DR. ENGLAND. Yes. Goes out and finds women.

CHAIRMAN PENDLETON. —in some kind of way to say are you a mother, and so forth and so on, but at least this is a person that's at home now and apparently has a job, and the employer wants the benefit of that, and the person still wants to make money, and that's one category.

On the other hand, there are advertisements in papers for telephone solicitation. It seems to me that that kind of a job meets the household demands or the marital or family demands of women, and it seems to me that that is a market that is targeted.

I guess what I'm asking is: Is the targeting of that market, irrespective of salary at this point, because you mentioned that that may be kind of hard to get to, is that discriminatory? Or is that taking advantage of the market forces; is it taking advantage of the person's desire to go to work?

DR. ENGLAND. My answer would be the same to the rephrased question. I see nothing discriminatory about it unless the employer, in setting the salary, takes into account that women are doing the work and sets the salary lower than would be paid to men. In the latter case, I would say that we're seeing sex discrimination of the variety at issue in comparable worth. Otherwise, I'd say no, it's not.

CHAIRMAN PENDLETON. I just want to make the point as you follow up. You have a theory you talked about. What was that? Sexual socialization theory? Is that what you mentioned earlier?

DR. ENGLAND. Yes.

CHAIRMAN PENDLETON. I just want to say that that is not limited to sex. When I grew up in Washington, D.C., I had some choices that were limiting. I was going to be a teacher, I might be a preacher, I could be a doctor, a lawyer, or a dentist, and that was it. But over a short period of time, I mean, that's where we were encouraged to go. I mean the dimensions were small. Or, if not, you spent 20 years or more in the service, and that was a way to have a meaningful occupation, I guess.

So, I was going to say that what I hear you saying about the socialization of women, that's not gender specific. I think in many cases that has been also race

specific to people who were told at an early age because of segregation, legal, that is, "This is about as far as you're going to go and you're able to work your job in the black community; you can't work someplace else."

DR. ENGLAND. I agree with that completely.

CHAIRMAN PENDLETON. Jack, you wanted to follow up? Because I had one more question for Dr. Berger, but I can come back to it. Do you want to?

COMMISSIONER BUNZEL. I wanted to ask a question based on what you've been asking and on what both Dr. England and Dr. Polachek have been talking about. I've scribbled a bunch of notes here because it comes out in a kind of skewed fashion.

I listened to you say, Dr. England, that if you can't measure, or if it's very hard to measure sex discrimination on the part of an employer, or, I think that's what you said, why should we, then, on the basis of that, move to comparable worth?

Now, this runs into some other things that I want to join with this and ask both of you and Dr. Polachek.

I'm playing a kind of paradigmatic game here in a sense. I'm trying to figure out in a larger frame than we've discussed why it is that Polachek favors this and England favors that. My sense of it is that if you both looked at the same data, you would see through different pairs of glasses different things and find different things.

Well, in social science research, we know that happens all the time. All right. Then I go back and say, what's really at issue here fundamentally? Why do these two very good scholars come at these particular data and, very honestly, as colleagues have differences? I suggest, and then I want you to comment, that it has something to do with some of the following things:

Dr. Polachek believes in the free market and is something of a libertarian.

Dr. England believes in something that might simply be called more of the welfare state ethic or the role of the government to have a role in trying to remedy inequity, rather than the market.

Dr. Polachek believes in access and opportunity. Dr. England emphasizes more outcomes and results.

They both agree that there are multiple factors that have to be taken into account, that the equation is not one to one, that we can't talk in strictly literal causal relationships.

But the fact is that while they have different descriptions, they also have widely different prescriptions as to what the remedies are.

What I'm trying to get at is this, and I'm not doing a very good job, because I don't have the time to sort it out. I really would like to ask each of you to go beyond your papers, beyond the data, beyond what it is we have been talking about here for the last hour and a half, and just talk with us a bit about what basically are some of the fundamental assumptions based on your own values that lead you to your different views of this question.

Try to relate this to what it is that is the nature of a civil right in all of this. You can tell I'm not a lawyer and I'm an academic and a very wordy one.

DR. ENGLAND. Well, now I feel at home with a social scientist.

COMMISSIONER BUNZEL. Yes, I know you both do.

DR. ENGLAND. Someone speaking my language, and I can respond.

CHAIRMAN PENDLETON. That's discrimination.

DR. ENGLAND. I think that you have to look at where Polachek and I disagree on describing what's going on in the world and separate that from questions of disagreeing on prescriptions. Actually, neither of us said a word about prescriptions in our papers, but you infer them.

With respect to our different understandings of what's going on in the world, I would say (and he may disagree) that the difference is that he is trained in the paradigm of neoclassical economics. For neoclassical economists, when the data don't fit the theory, they retain the theory while looking around for data that support the theory.

Now, in sociology, we don't have any coherent grand theory, so we look a lot at empirical evidence. We may entertain a hypothesis from economic theory or anywhere else. We have great fidelity to the data because that's all we have, you see. Theories of the middle range is much of what we have.

Polachek has correctly pointed out how a lot of differentials do go in the direction that you would predict by the human capital theory, and so, obviously, that has something to do with what's going on. I agree completely.

I'm saying there are also other factors operating. There are some forms of demand side discrimination. There is also socialization.

So my view is more eclectic and I have emphasized more of those things that I think he leaves out.

COMMISSIONER BUNZEL. Does this—

DR. ENGLAND. Let's turn to the prescriptive issues.

COMMISSIONER BUNZEL. Yes. All right. Okay.

DR. ENGLAND. This is really what I think you wanted to get at. I don't know Polachek's political philosophy. I think there is this tendency to see comparable worth as this incredibly radical doctrine that's going to bring the government breathing down people's necks on even more issues than before, by requiring all these administrative things.

Now, there's some truth to that. Any time you talk about a new thing you might prohibit, that's an added intrusion of government into the economy. But I don't see it in principle as markedly different from the kinds of laws about discrimination—

COMMISSIONER BUNZEL. Markedly with a *D* here.

DR. ENGLAND. Pardon me?

COMMISSIONER BUNZEL. Markedly with a *D*.

DR. ENGLAND. Yes, markedly with a *D*.

COMMISSIONER BUNZEL. Okay.

DR. ENGLAND. The point I'm trying to make is this. We have now two basic sets of laws about sex discrimination. Let me put them in my own words. Sex cannot be taken into account in setting wages within a single job. Then we have Title VII that says sex cannot be taken into account in deciding who gets into what job.

Comparable worth is adding to that a third: Sex cannot be taken into account when you assign wage differentials between jobs.

Now, I don't see a big radical departure between the first two and the third. It is true that if the Supreme Court interprets Title VII expansively, to include comparable worth, it will be one more government intervention. Some think that that's inherently troublesome.

Maybe in the final analysis it does get down to what moves you. It bothers me a little bit to think of concentrations of government power. If they were much more concentrated, I would be more bothered. It moves me a lot to think that women are not earning their worth because employers may take sex into account in setting the wages of jobs.

It moves me a lot to know that there are a lot of women, some of them single heads of households, who are at the poverty line partly because of sex discrimination. That moves me to advocate some prescriptions to eradicate this kind of discrimination.

There is no either/or of being for Title VII or for comparable worth. One could be for both. One could be against both.

So that's where I think our differences are.

DR. POLACHEK. Okay. I'm not sure I agree on our differences, so let me outline why we differ—

DR. ENGLAND. Differ on our differences.

DR. POLACHEK. —on our differences.

CHAIRMAN PENDLETON. For those who didn't hear, Dr. Polachek does not agree with the differences.

DR. POLACHEK. Okay. I see our differences as perhaps going into the wrong on two parts. First of all, there are technical differences, and second of all, we can go then and discuss the philosophical differences which might exist with respect to what we believe about the free market economy.

On the technical side, the difference that we find is as follows: I find that the best model for occupational segregation which exists today for which we have published results, the best, the very best, yields that occupational segregation explains 39 percent of the wage gap. Most studies, including computations from studies Professor England has done, has gotten in the ballpark of 4.7 percent, 5 percent, at best 6 percent. Okay. That's fact one.

Fact two is that even the worst studies which analyze wage differentials from the human capital point of view explain at least 45 percent of the wage gap. Now, people who criticize the human capital theory, and that's the weakest implementation of human capital theories, say, "Well, wait, there's at least a 50 percent wage gap which is unexplained; therefore, it's discrimination."

Now, one could ask the very, very same question with respect to the models of occupational segregation. They explain like between 4.7 percent, 6 percent, 12 percent, 19 percent, and at best, 39 percent. What's the residual? You said that this occupational segregation is discrimination. Now, you know, there is a bigger residual using that model than using the human capital model.

I further claim that—you know, what is then claimed is that, "Well, occupational segregation models, the testing of it isn't tested well. We've got to do better." I'm saying that's the same problem with human capital models as well. But we have done better, and we can get upwards of close to 90 something percent with this so-called human capital model, which deals with lifetime labor force participation.

Philosophically do we differ? I'm not sure we differ philosophically. True, I'm an economist. True, Paula is a sociologist. It's true that economists tend to have a paradigm, tend to have a theory, which tries to explain some of the results. It's true that sociologists look at numbers and sometimes don't always have an underlying theory which might explain all the numbers.

But the one thing about an empirical economist is that they can separate the theory from the numbers, and in the conclusions that I reach, it does not depend on any underlying theory. It's just looking at the numbers.

Professor England, for example, criticizes my model of occupational choice because maybe, and it's not true, but she claims that one conclusion of the human capital theory is wrong.

Well, my model of occupational choice, the figures that I gave you about the increase in the number of women in managerial occupations and the decrease of the number of women in service type occupations, is not based on a theory. That's based on statistical analysis void of theory.

The theory that I bring in has tried to explain why it is true, why it is true that these patterns emerge. That's when I bring in theory. So the conclusions that I've given you are based basically—were based explicitly on data.

With respect to my reasons for trying to claim that the market seems to work, I'm not inherently a free market libertarian, although it seems to me the data indicates that often markets do work. Data also indicates that often when we have certain kinds of legislation, we get inefficiencies within the market.

What I'm trying to avoid is creating inefficiencies which could exist. I'm trying to avoid what some people have called a quick fix, although—well, I'm trying to—what I'm trying to avoid are those things like the quick fix.

I'm interested in creating the correct incentives so that we have efficiency in the economy and, yet, we don't just change wages in the short run, which creates more problems in the long run.

We could equalize male and female wages. That's not hard. We can create legislation to do that. But if we do, it might create inefficiencies which will hamper the growth and development of this country. It will lower the rate of growth of the GNP, which would make us all worse off in the future. It might make some of us better off now, but in the end we might suffer as a result of it.

COMMISSIONER BUNZEL. Dr. England, I ask the same question of you, and I hope it will be—

DR. BELLER. Can I add something on this question before you go on?

COMMISSIONER BUNZEL. Well, let me just finish and then—let me just finish because I don't want to take up too much time here. I have one quick question. I hope maybe you can give me a quick answer. I'm still trying to clarify my own thinking about some issues that have really teased me a great deal.

The question is this, and it may not be the best one to put to you: Do you believe, each of you, that there should be the same gender ratio in each occupation as in the whole labor force?

DR. ENGLAND. Gender ratio in earnings?

COMMISSIONER BUNZEL. Yes. No, the same gender ratio in each—earnings, yes, in each occupation, as in the whole labor force.

DR. ENGLAND. Do you mean the same proportion of men and women in each occupation as in the whole labor force or the same sex gap or lack thereof in earnings in each occupation?

COMMISSIONER BUNZEL. I'm talking about lack of earnings.

DR. ENGLAND. Not necessarily. That is, what we're always interested in is the sex gap in earnings after adjusting for qualifications.

DR. POLACHEK. That's not the question.

COMMISSIONER BUNZEL. Well, I understand that, yes. But I was really asking just to get a brief—

DR. ENGLAND. Adjusting for all of those things, should there be the same sex gap? Is that the question? Then I'd say yes.

COMMISSIONER BUNZEL. In earnings, yes.

DR. ENGLAND. Well, if we're adjusting for all the productivity-related factors, then we would expect, in the absence of discrimination, to find no sex gap in earnings within or between occupations.

COMMISSIONER BUNZEL. Well, maybe.

CHAIRMAN PENDLETON. Just a second. I want to take someone. Ms. Chavez, you have a question, then Mr. Destro, then Ms. Ramirez.

DR. ENGLAND. If we measured all the relevant—

DR. BELLER. Excuse me.

CHAIRMAN PENDLETON. I'm sorry.

COMMISSIONER BUNZEL. No, I want to ask Mr. Polachek the same question.

DR. BELLER. I want to add something to the answer to the previous question, if I may.

CHAIRMAN PENDLETON. Fine.

DR. BELLER. Okay. All right. I just think that it's wrong to say that there is—that the differences are on a philosophical basis, because I am as much of a free market economist as Professor Polachek. We were both trained by the same Chicago-oriented professors, and I agree with England.

I think the difference is a difference of experience. Professor Polachek believes that there is no discrimination against women in the labor market by employers, and I do. I think that is part of the difference.

CHAIRMAN PENDLETON. He is shaking his head; he doesn't believe that.

DR. POLACHEK. I never said that.

DR. BELLER. He said he believes there is societal discrimination, but there is no discrimination by employers.

DR. POLACHEK. No, wait. I said it indicates two forms, societal and market, and then they go on the discrimination point.

COMMISSIONER BUNZEL. He said there can be discrimination.

DR. BELLER. Okay. Well, I think the difference may ride on experience rather than his marital difference.

And—but since discrimination is an interference in the market itself, it may call for another interference that in some sense is countervailing.

COMMISSIONER BUNZEL. I know that philosophy is no more an exact science than is economics or political science and certainly not sociology. But I do have a feeling, nonetheless, that there is something here that has to do with values, how one approaches problems, which is what I had in mind by my own idiom of the pairs of glasses one wears and what one sees. These things have always teased me and I'm sure they tease each of you.

I still put the same question that I put to Dr. England to you, Mr. Polachek.

DR. POLACHEK. In terms of raw wage ratios, you would find gender differences across occupations. If we had the know-how to completely adjust for all of the characteristics, including motivational characteristics and so on, then you'd wipe away the wage gap, and Professor England and I agree.

CHAIRMAN PENDLETON. Miss Chavez?

MS. CHAVEZ. I don't want to make this simplistic, but coming at this not as a social scientist or a lawyer, I do think there are some very major philosophical differences between the ways in which the panelists have viewed data. And I think they stem from something that has not yet been mentioned. I would extrapolate from the papers presented in testimony today that Doctors Polachek and Berger view differences between groups as primarily the result of individual choice. The focus of attention is on the individual and the choices that individuals make regarding their future.

I would say that Doctors Beller and England view things from a determinist point of view. They assume that society does, in fact, determine choices for individuals and that choices are not made freely, but other factors, such as socialization or discrimination, primarily account for differences.

Is that a fair description of differences between the way in which you're coming at these problems?

DR. POLACHEK. Me?

MS. CHAVEZ. Yes.

DR. POLACHEK. I agree with your comment, except that I think that we go a little bit beyond claiming that the differences in my case are all supply oriented. I think that much of it is determined in the market, for example, not just—

MS. CHAVEZ. But it is still the individual who, taking a look at the market, makes choices?

DR. POLACHEK. That's right. That's right.

MS. CHAVEZ. As opposed to choices being determined for the individual by factors beyond his control, totally beyond his control.

DR. POLACHEK. Well, individuals make choices based on conditions which exist in society, and I'm not claiming that people's choices are completely free—there are constraints. Everyone makes decisions based on the constraints that exist, just as the societal discrimination, which I alluded to, and it seems that there are constraints; there are notions that women, for example, should stay home, should take responsibility more for the children than the husband.

But part of this kind of constraints seems to indicate that on average women are younger than their husbands, which gives them a marked disadvantage right at the start of marriage. Also, they are less educated than their husbands on average, which again gives them a disadvantage right at the start of marriage.

DR. ENGLAND. They are not less educated.

DR. POLACHEK. Well, if you look at husband and wife pairs, they are.

DR. BERGER. Working-class women have higher education than—

DR. POLACHEK. That's right. But if you look at husband and wife pairs, the husbands are more educated. So these are conditions which exist, and part of these conditions which exist determine the choices. That's the point. That is where discrimination comes into play, the societal-type discrimination.

MS. CHAVEZ. Could I just ask one short question?

DR. POLACHEK. The way to combat—okay, well.

MS. CHAVEZ. Of Dr. England. In all of the paper, when you talk about socialization, I was surprised that you make no reference to biological distinctions between men and women, the fact that women do bear children. I wonder what role you believe children play? Is socialization not in large part determined by the biological fact that women bear children?

DR. ENGLAND. My own view is that there are innate biological differences between men and women, for example, in upper body strength, and in who can nurse children, and in some other factors. But socialization patterns are a wild exaggeration of the biological differences.

That is, the biological differences maybe did give rise at some point to the patterns of socialization. Now the socialized traits that females and males are encouraged to take on are a wild exaggeration of what differences are really biologically necessary. I just choose not to address talking about the biological differences. One can only talk about so many things.

It is biologically dictated that women bear children. It's not biologically dictated that they do 90 percent of the caretaking that gets done. That's a social decision.

CHAIRMAN PENDLETON. Mr. Destro. Then we have to go to Commissioner Ramirez.

COMMISSIONER DESTRO. I have a question for Dr. Beller. In your paper, you indicate that there is about a 30 to 40 percent differential which is not explained after controlling for measurable differences in human capital and the amount of labor supply.

One thing I haven't heard any of the panelists address, in terms of explaining the gap, is that it seems to other participants as well as you that the focus is on either the value of the work to the employer or the human capital and labor supply.

What I'd like to know is what other factors might account for the differential and if some of them might be, for example, seniority and time in the work force or the impact of collective bargaining on wage rates. It seems to me that that's not been addressed at all. Many times in unionized shops workers are paid a lot more than those in nonunion shops. There'd be a differential there because many women's occupations have not been unionized to date.

DR. BELLER. That's certainly true. Typically, data sets only contain certain of the factors, and you rarely get all of the factors in the same data set. That's why you look at many, many studies, and you see what the factors do account for when they are able to be controlled for.

You know, you still have a substantial or sizable gap that's unexplained when you control the best you can for these different factors. The ones you mentioned should cause wage differentials, but they almost never all are in the same data set.

COMMISSIONER DESTRO. Well, why aren't they in the same data set? It seems to me that as soon as you leave out an important factor like collectivization, then you really skew your sample or your data set.

DR. BELLER. Okay. I mean, the kinds of factors you raise are typically in longitudinal data sets, and so, in a longitudinal data set, you would have information on those factors. Longitudinal data sets where you collect data year after year are extremely expensive and they tend to be small samples.

The kind of research I did was designed to study the effects of equal employment opportunity laws. I could not use a small sample from a longitudinal data set. I had to use cross-sectional, single-year census data, and they don't collect the information on your work history, your seniority, or whether or not you're a union member.

So, there are simply two different kinds of data sets that tend to contain different factors, presumably because of the costs and other limitations on interview surveys.

COMMISSIONER DESTRO. Why, then, should someone who—one of the things I enjoy about this process is that you learn a lot by reading the papers; but when I first started reading your paper, my immediate reaction as a person who hasn't paid a lot of attention to this area and who has become increasingly interested was that: My Lord, there is a 30 to 40 percent unexplained wage differential.

Then I found that there are all kinds of other factors. Why the emphasis on the unexplained factor, then, as a basis or as an argument for adopting a different theory of job evaluation than

we have now? A market theory as opposed to a single thing or factor?

DR. BELLER. I don't follow the last part of your question, but the—

COMMISSIONER DESTRO. Let me rephrase that.

DR. BELLER. If we could explain—all right, go ahead.

COMMISSIONER DESTRO. Okay. I guess my question is that in the arguments for comparable worth, what we find—whether we're dealing with sex-segregated occupations or not—is that whenever we have an unexplained salary differential, some percentage of the unexplained differential is attributed to sex discrimination. Right?

It seems to me that the larger the unexplained differential, the more argument we hear that there is sex discrimination there. What I understood you to be saying is—

DR. BELLER. Any unexplained differential can be due to discrimination, and many economists would argue that the unexplained differential is due to discrimination. It was alluded to before that we are trying to chip away at that differential. We try to explain as much of the difference as we can on the basis of productivity-related factors because we're all interested in finding out the truth about this.

To the extent that wage differentials, in fact, are due to productivity differences, that's important to know. The part we can't explain may be due to some of the other variables that we have not yet been able to control for. But, as I said before, they would have to be uncorrelated with the variables we are already controlling for, for them to add a lot of explanatory power, which is not very likely. The rest of the unexplained differential may be due to discrimination.

COMMISSIONER DESTRO. Okay. I think that answers my question. With respect to your use of Title VII as a tool for analysis, in Dr. Goldin's paper I read that demographic trends have increased the participation of women in the work force, wholly apart from Title VII.

How would you correlate the increase in demographic participation in the work force, as well as participation in the labor force for a longer time and then dropping out, which may not show up in the present generation, in the present cohort, with your Title VII data? They seem to correspond. Has there been any intercorrelational work done on that?

DR. BELLER. Meaning as to whether or not Title VII's enforcement is affecting the labor force participation and the extent to which women stay on the job?

COMMISSIONER DESTRO. Well, they seem to be paralleling one another from what I read in Dr. Goldin's paper. Now, is there any research being done to determine whether, if you took Title VII away tomorrow, the trend would be the same or similar?

I know that, as a civil rights lawyer, I'd like to think that Title VII is the answer. Nevertheless, I'd like to know your view, because these trends are interesting.

DR. BELLER. There has been very little work addressing whether Title VII has affected labor force participation and the extent to which women stay on a job. But there is one paper that I know of, and that was a study by Osterman, that looked at the effect of affirmative action on turnover and quitting among women workers.

It did show that it reduced quitting. That is, when women saw that they had improved opportunities to move up in the firms, they were less likely to quit.

COMMISSIONER DESTRO. The last question for you is that in your paper you indicate that even in the absence of discrimination, women might choose other occupations. Wouldn't that explain part of the gap? Wouldn't that be one of the factors?

DR. BELLER. I do not deny that choice may play a role in the occupations that women are in. I just argue that the empirical evidence has not been strongly in favor of that explanation.

But, as I said, theoretically I find them both persuasive, and, you know, if I had to take a stab, I'd say I think it's 50–50.

COMMISSIONER DESTRO. Okay. Thank you.

CHAIRMAN PENDLETON. Have you got more?

COMMISSIONER DESTRO. Yes, I have just a couple more.

CHAIRMAN PENDLETON. Okay.

COMMISSIONER DESTRO. One for Dr. England. One of the things that's fascinated me throughout my readings on all of this is the use of the multiple regression and the assignment of a coefficient to find out this unexplained gap with respect to segregation.

If we know at the outset that women are segregated and we know at the outset that there is a gap, does it, using the segregation factor to arrive at the coefficient of discrimination, simply assume or give additional weight to segregation as the cause of the gap, and then doesn't it just become a circle?

The reason I ask that question is when you made the comparison between dock workers and somewhere else, it seems to me that the weighting of these factors is critical. What I'd like for you to explain to me a little bit is how you go about assigning weights to factors.

DR. ENGLAND. Recall that I divided my discussion into explaining segregation first and then explaining the sex gap in pay given that we have segregation. I gather that your question is more about the latter.

COMMISSIONER DESTRO. Right.

DR. ENGLAND. That is, we have men and women in these different jobs. First, let me say that most of the regression analyses that people have talked about, you know, control for individual qualifications to find how much of the sex gap in pay is unaccounted for. They control for many human capital characteristics. They do not consider whether job segregation comes in or not. That's just a black box left out of the analysis. They're just asking if equally qualified people are paid equally, apart from what jobs they are in.

Now, another way to use regression analysis to deal more specifically with the comparable worth issue is to look at the jobs men and women are in and how the different job skills and other job characteristics affect the wages of jobs. Then we use regression analysis to see if predominantly female jobs pay less than is commensurate with their skill levels and other characteristics. That's where we put percent female in as a variable. Its net effect is what I would say measures this kind of comparable worth discrimination.

You have asked how one gets the weights for the different skill factors. If you're a manager and you're doing a job evaluation, it is a big problem to decide how to get the weights. You'll hear a lot of discussion about this later today. But if you're just asking the question of whether employers have engaged in the kind of discrimination at issue in comparable worth, then you get the weights empirically.

For example, take an analysis I've done. I took a list of about 20 different kinds of skill characteristics from the *Dictionary of Occupational Titles*, I entered all those variables into a regression equation, and the weights come out of the regression analysis. The weight or coefficient for any one skill variable tells you that, on average, controlling for all these *other* skill characteristics, if a job has one unit more of this type of skill, it pays *X* amount more.

That's not me deciding that weight. That's the analysis telling us how employers weight the variable in their pay schemes. I call it a policy-capturing approach. The analysis tells us what policies employers use across the labor force.

So, when you explain as much as you can with measures of jobs' skills, you go on to ask if there is a tendency for the predominantly female jobs to pay less than the predominantly male jobs that are comparable on some points added up by those weights derived empirically.

So, I don't think it prejudges the question. The analysis does not assume that any pay difference between a male and a female occupation is discriminatory. It only assumes that discrimination explains any pay difference between a male and a female occupation that's left after you adjust for all these skill characteristics according to the weights that you can see empirically employers give those skill characteristics. That's the differential that I would define as the kind of wage discrimination at issue in comparable worth. This is totally distinct from discrimination in placement, hiring, or promotion.

Now, this analysis is subject to all the usual problems of social science research. If there are 17 relevant variables that we've omitted, we may be overestimating or underestimating the extent of discrimination. All research, not only that on comparable worth, has these problems.

CHAIRMAN PENDLETON. Do you have more, Bob?

COMMISSIONER DESTRO. No. I would just ask, if I might, just for the record, that I have some questions for Dr. Berger, and would like to have her respond to them after the hearing, if that's permissible.

CHAIRMAN PENDLETON. You mean in writing?

COMMISSIONER DESTRO. In writing.

CHAIRMAN PENDLETON. Yes. Commissioner Ramirez.

COMMISSIONER RAMIREZ. I think Dr. England began to address some of the issues that concern me, but I've been sitting through all of this, and again I'd like to not come at it as a social scientist, but to say to you that as a woman who has made choices between family and career and has always had as a first priority the family considerations, I find no incompatibility between a desire to see equity in the workplace for women and that dedication to family.

Let me ask a question this way: Let's assume for a minute that, indeed, the overwhelming majority of

women, in fact, choose to go into these female occupations, that we'd rather teach children and nurture people and children in day care centers and help people in hospitals and that all of those are a matter of choice, and let us assume that there is no pressure to keep us in those occupations. Now, and let us assume that we are in those, that we took the job in issue in order to supplement our family income and that we have in the back of our minds the possibility that we might take summers off to be with our families.

Is it still not discrimination for the body that sets the rates for those jobs to say because these jobs are held by women, we will set them at a lower rate, and because these women have made these choices in terms of lifestyle, and I really don't know what would happen to the kids if women and some men didn't make these choices, but when you talk about societal needs, we do have to remember that somebody does have to take care of children.

But is it, given that scenario in which either the chairman of the Senate Finance Committee, who deals with day care funding, or every legislature in every State in this country sets salaries for teachers in which they basically say all of these women are just working to bring in a little extra income for their families, so they keep wages low. Is that not discrimination?

DR. ENGLAND. I would say that it is. That is, it is discrimination in wage setting of the variety at issue in comparable worth to the extent that they have taken the sex of the people doing the work into account in setting the wages, rather than setting the wages on the basis of the contribution of the job to the organization's goals or profit.

I think your point is extraordinarily well taken. I wish I could say it as well, that all of these questions about whether women chose the occupations, and their loyalties to their families, are irrelevant. If the job isn't paid commensurate with its contribution and that differential is because of the sex of the people doing the work, common plain English tells me that's sex discrimination, whether or not the women were forced into those jobs.

COMMISSIONER RAMIREZ. Let me ask Dr. Polachek—

DR. ENGLAND. Now, of course, there's a double whammy if they were also forced into the jobs, but I think the point holds regardless of that.

COMMISSIONER RAMIREZ. Can you answer? Can you give me your views on that issue?

DR. POLACHEK. Well, I think if I understand your question right, it's a very important question, and that is, is that if we do go into a system of comparable worth and we do have boards which determine wages for each particular job, is it not possible that this board can use criteria which are themselves discriminatory? The answer is, of course, they can. That might be one good reason not to use such boards, but to revert back to the marketplace, presumably, that would behave efficiently and not use such criteria.

COMMISSIONER RAMIREZ. You didn't answer my question. Do State legislators who set salaries for the nurses, for teachers—and I have testified before them many times, and it is clear to me that they are taking the sex of the people in these job categories into consideration—are they practicing discrimination?

DR. POLACHEK. If people take the sex of the person into account in assigning a wage, yes, that is discrimination.

COMMISSIONER RAMIREZ. Just one more question to you, and that is, you talked about day care—

DR. POLACHEK. Yes.

COMMISSIONER RAMIREZ. As a Federal policy that would tend to increase the effects of—tell me what you said about day care and then tell me what you think a possible solution to that is.

DR. POLACHEK. Well, I said that there are differences in lifetime labor force commitment between men and women that exist.

Now, part of the difference comes about because women on average have different incentives to participate and to have a full commitment in the labor market compared to men. One reason is societal; the burden of family care seems to be placed on the part of women. If it is true, then, that no day care is available, or if it is true that only high-cost day care is available, then what happens is that the women are the ones that stay home or drop out of the labor force to take care of their children.

As an indicator that that is true, merely look at the change in labor force participation of women when their children reach school age. Labor force participation rates of women rise.

So, I'm saying the unavailability of free day care is an impediment to full-time labor force participation. That is one impediment, but an important one that keeps women out of the labor force full time.

CHAIRMAN PENDLETON. General Counsel has a couple of questions; then we can adjourn.

MR. DISLER. I have a couple of questions for Dr. Beller first. In your paper you mentioned that you operationalized male-dominated occupations at 72.2 percent male, and I'm just wondering where that number comes from. Why is it 72.2 percent, as opposed—

DR. BELLER. I take the percentage that males form of the labor force or of all occupations, and I add 5 percentage points to that.

MR. DISLER. Just arbitrarily or is it—I'm just wondering where that comes from.

DR. BELLER. Yes, it's arbitrary as to what exact cutoff you make. I did the empirical work for other cutoffs. You add 10 percentage points to the proportion in the labor force or 20, and basically it doesn't change the results, because most occupations are so far from integrated that very few occupations are in that middle range.

MR. DISLER. Okay. Earlier in your paper and throughout your presentation, you mentioned that a discrimination model explains how wages may be higher in the male sector and lower in the female sector even after you have taken into account differences in the productivity characteristics of the workers.

I'm just wondering how in that analysis or in these analyses generally the supply and demand factors, labor supply and demand factors, are taken into account. If you're only looking at productivity characteristics, does that take into account supply and demand factors?

This is parallel to Commissioner Destro's questioning when he was asking about the effect of unionization, for example, on wage rates.

DR. BELLER. Yes. What I meant by the productivity-related characteristics are the supply characteristics, like your—in human capital, your education, your training, your marital status, which will affect your participation. That's what I mean by the productivity-related characteristics, in what's called a human capital model.

Then the demand is the—discrimination is a demand model. It's saying that employers, the extent to which they will want to hire women and at a particular wage is affected by their dislike for having women in certain positions. They have preference against having women in certain positions.

At least that's one theory of discrimination. It expresses it as a distaste for hiring women in certain jobs.

MR. DISLER. Let me ask you another question about implementation of comparable worth, some of the consequences. Is it possible or likely that the implementation of that concept to the extent that rates and wages of predominantly female jobs might retard the desegregation of occupations?

DR. BELLER. I think that's an important point. I haven't considered that because I haven't done my paper on comparable worth, but let me say this, that to some extent if you make female-dominated occupations relatively more attractive, you will retard the extent to which women are exiting those occupations.

MR. DISLER. One last question that I wanted to direct to you and I guess to Dr. Polachek, who is the only other economist up there. If a firm is going to increase suddenly its wage for a particular job in more than a nominal way, say, a 10 or 15 percent wage increase for one of its job categories without an increase in productivity either in that job or anywhere else in the firm, what kinds of economic consequences would we expect for that firm in terms of, for example, supply and demand with respect to workers both in that one job category and throughout the firm? Would you expect that the demand, for example, by the employer for workers in that one job classification might go down, for example?

DR. BELLER. If the wages were raised above the productivity of those workers to that firm, then you would expect to see them hiring fewer of those workers.

MR. DISLER. Okay. Might the firm's prices for its product or service also go up?

DR. BELLER. I can't answer that off the top of my head. I'd have to figure it out.

MR. DISLER. Okay. Dr. Polachek.

CHAIRMAN PENDLETON. Could you assume that's the case?

DR. POLACHEK. Yes. I'm sorry?

CHAIRMAN PENDLETON. I was going to say—maybe you're going to answer it—I was going to say, can you for the sake of discussion, would you assume that the cost of the product goes up to pay the cost of the wage?

DR. POLACHEK. Yes, that would occur; that would tend to occur, yes.

DR. BELLER. In a perfectly competitive firm, but not necessarily otherwise.

DR. POLACHEK. The other point is that if you increase wages by this amount, 10 to 15 percent, in one particular firm, that is, in a competitive industry,

then in the extreme that firm could actually go out of business.

CHAIRMAN PENDLETON. Thank you. Are you through?

COMMISSIONER BERRY. Wait, Mr. Chairman. I have to ask some more questions based on your answers to this last line of questioning.

First of all, Miss Beller, even if raising the wages of women in certain occupations caused them to exit more slowly from those occupations, is that a good reason not to raise their wages if the jobs are shown to have value and comparable to other jobs?

DR. BELLER. Certainly not.

COMMISSIONER BERRY. Also, could we not assume that even if the wages were raised and women stayed, therefore, in those occupations, that some men might be attracted to those occupations by the higher wages?

DR. BELLER. Yes. In fact, the data that I looked at, well, there is some movement of men into typically female occupations. It's nowhere near the extent to the reverse. And if teaching were valued the way it perhaps deserves to be valued in this society, I think—

CHAIRMAN PENDLETON. Good luck.

DR. BELLER. —there would be—it would be viewed as an acceptable occupation for men as well. So—

COMMISSIONER BERRY. In other words, if this did happen, it might hypothetically open up more choices for both women and men, if we were to raise the wages, rather than just worrying about it retarding women from leaving certain occupations; that you might have men, for example, who might go into the occupation where the wage is raised, and you might—this is all hypothetical, since nobody knows what's going to happen—you might also have more women going into male occupations that men have left and gone into the ones for women.

DR. BELLER. That's correct.

COMMISSIONER BERRY. Hypothetically. Then the only other point was, even if it were the case—

CHAIRMAN PENDLETON. Commissioner Berry, if you—oh, go ahead.

COMMISSIONER BERRY. —even if it were the case that the cost to consumers were higher because the employer had to add in the cost of paying women fair wages by my definition, wages that were related to the value of their work, is that a reason not to pay women the value of wages related to their work? I mean, is that a reason not to do it, because—

DR. BELLER. Probably not, because—

COMMISSIONER BERRY. —consumers might have to pay more?

DR. BELLER. Probably not. Unionism probably raises the cost of wages as well as other—there are many other factors that raise prices. So that alone would not necessarily be one.

COMMISSIONER BERRY. I just wondered, because it occurred to me that one argument for not ending slavery would be that it cost more to have people who weren't slaves work than to have them be slaves. But I leave it at that, Mr. Chairman.

CHAIRMAN PENDLETON. Commissioner Berry makes a good point. I understand where we're going with this line of questioning and hypotheticals and what-have-you, but it is clear to me you can't have the wages unless you make the money. It does seem to me it's very clear that if you have to increase the cost of the product, you have got a problem.

Another thing about it is that—look what we've done with protectionism and unionism in this country. And we have done that and we have made demands to the point whereby we have pushed a lot of jobs right out of this country. So, if we're going to talk about that situation, we've got to talk about how this gets into collective bargaining and the whole discussion.

So, to leave it with saying just hypothetically you should not have to worry about the fact that you're going to make fair salary is only one point. The other point is from where you get the money to give the fair wage. That's not going to happen from the tooth fairy.

If we can, can we adjourn this meeting until 3 o'clock?

COMMISSIONER BUNZEL. I move adjournment.

CHAIRMAN PENDLETON. I mean recess until 3 o'clock.

[Recess.]

CHAIRMAN PENDLETON. If there is anyone in the room who is hearing impaired, would you please raise your hand so we can identify you and be able to respond appropriately.

Okay. Is there anyone here who is hearing impaired at all? Thank you.

We're convening after the recess the afternoon session. The afternoon session is entitled Comparable Worth Doctrine and Its Implementation.

Our next panel will focus on the implementation of the comparable worth doctrine. Our four panelists will be Dr. Donald Schwab, professor of

business research in the Graduate School of the University of Wisconsin; Dr. Alvin O. Bellak, a general partner of Hay Associates, a management consulting firm which has provided consulting services on comparable worth issues to major corporations; Professor Herbert Northrup, the former employee relations manager for the General Electric Corporation, and since 1961 a professor at the University of Pennsylvania's Wharton School and director of its Industrial Research Unit. Our final panel member is Dr. Ronnie Steinberg, who is director of the program on comparable worth at the Center for Women in Government and an associate professor of government at the State University of New York at Albany.

We will start the presentation in this order: Dr. Bellak, Dr. Schwab, Dr. Northrup, and Dr. Steinberg.

PANEL: COMPARABLE WORTH DOCTRINE AND ITS IMPLEMENTATION

Statement of Alvin O. Bellak, General Partner, Hay Associates

DR. BELLAK. Comparable worth, as we all know, is a social, an economic, and a political issue. My best contribution to the debate would be to address it as a technologist and to stay away as best I can from the other aspects. I'm a practicing consultant. I have been at job evaluation and compensation studies for some 27 years.

The common definition of comparable worth is being codified in 19 State laws so far and goes generally like this: Males and females are to be paid equally for work requiring comparable skill, effort, and responsibility under similar working conditions.

It is important to note that the only basis for pay differentials generally recognized in the laws is something that sounds like performance, for example, seniority or productivity.

Now, I would like to emphasize again that the point of departure for my paper and for this summary of it is that we're dealing with laws that say that: (1) males and females are to be treated equally; (2) skill, effort, responsibility, and working conditions are the compensable factors (except for the State of California, the compensable factors are not further defined in the laws); and (3) generally the only pay differentials allowed are for performance.

What this translates into, for anybody trying to implement comparable worth, is that they need one job evaluation system for all the jobs in the organization and one parallel set of pay rates.

With that as a backdrop, I will now turn to the *Washington State* case that has attracted a lot of attention. The State of Washington employed a consultant. He did a job evaluation study and found that some jobs had the same or very similar point scores. If the jobs were predominantly filled by women, they tended to be paid less than the jobs that were predominantly filled by men. I think it averaged about a 20 percent difference. The judge, Jack E. Tanner, said that that constituted discrimination and the State was liable.

Does this mean that if an organization has a job evaluation plan, some kind of a point system, and it prices jobs with the same or similar points differently, pricing meaning setting the pay rate, are they now and forevermore admitting discrimination? Are they now liable for the consequences?

As far as I can see, and some expert opinion elsewhere agrees, the Tanner decision has not ended the matter. I think it has a longer distance to go. There are other decisions and other courts.

Now, let's address job evaluation. In job evaluation, you rank order jobs using compensable factors and weightings that reflect the value system of an organization: Skill, effort, responsibility, working conditions are generic compensable factors.

While there is a large body of knowledge about these factors, there is great room for variation as an organization defines these factors in terms of a set of working scales for job measurement purposes. As a general rule, the more homogeneous the organization, the easier it is to get agreement on a specific set of scales, either using an established set or developing a set *de novo*. In a large diverse organization, a heterogeneous one, it is common for various segments of the organization to each want their own set of scales, and that's what you find, three or four or more different evaluation systems in the same large heterogeneous organization.

Why should there be so many value systems? Well, just look at the mix of people in jobs. In the private sector, you have factory workers, office workers, scientists, executives, and so forth. In the public sector, you have police, clerical workers also, doctors, lawyers, and so forth. Can you reasonably expect scientists and blue-collar workers to believe that their jobs can be evaluated on the same scale? How about police and clerical workers? How about sales people and accountants?

Net net, in a large diverse organization, one ends up with multiple job evaluation systems among the various segments, and often some segments not using any job evaluation system at all. That is, they rely on what is known as market pricing.

Since there is no absolute job measurement system in existence and none foreseen, and since multiple value systems exist among the multiple segments of a large organization, and since this virtually always leads to multiple job evaluation systems, how do you compare markedly different jobs across segments, which is what you would have to do to implement comparable worth?

The Hay system is very widely used and practically always across multiple segments in a single organization, but almost never across *all* the segments. One highly publicized broad application of the Hay system, which was successfully completed, was a comparable worth project for the city of San Jose. It included all jobs at all levels except the uniformed classes, police and firefighters.

How was the project set up? First, union and management agreed in advance to use the Hay system and live with the results. Second, job descriptions were carefully prepared with jobholder input. Third, the evaluations were made by a representative committee that included union and nonunion people, management and nonmanagement people, males and females.

The keys to the success of the project were: (1) The value system of the Hay guide chart method was suitable for the employees, at least they thought so. (2) The process was open and visibly fair. (3) The climate was clearly constructive, i.e., they agreed to agree when they finished. The evaluators achieved consensus on the relative worth of the very different jobs within the structure and value system of the government of the city of San Jose.

In the absence of any absolute job evaluation technology that can produce absolute truth, San Jose achieved the only other acceptable end result, namely, credibility. I can't emphasize this enough. Job evaluation is useful only to the extent that what it produces is credible to the people involved, both the governors and the governed.

Now, what do we foresee if, by law, we force any single job evaluation plan on a large and diverse organization? Keep in mind that in terms of numbers of jobs and employees, San Jose, as an employer, is tiny compared to some industrial companies that have hundreds of thousands of employees. What do we foresee if we ask the many constituencies in a large organization to voluntarily come together to agree on a single job evaluation system that would do justice to their different and frequently conflicting sets of values?

Remember again, under the comparable worth doctrine and the State laws, one set of points will lead to one set of pay rates. You can believe that once the people understand this game, the various constituencies will care a great deal about how those points are determined.

In our litigious society, one has to assume that this will all end up in the courts. Today in the State of Washington sort of case, we have a situation where job *A* has the same points as job *B* but is paid less. I predict that tomorrow we will hear the argument that job *C* would have as many points as job *D*, and would therefore be paid the same, if the job evaluation system used by the State or the company had the correct compensable factors and/or the correct weightings for the kind of work performed by job *C*. The plantiffs will simply challenge the validity of whatever job evaluation system was used. How are judges going to handle this allegation? The plaintiffs will surely be able to mount an army of experts to testify on their behalf.

Now, let's suppose that there was a universal method of job evaluation and it produced absolute truth for every variety of job in every variety of organization. Let's further suppose that for a single large and diverse organization we plotted the pay for each and every jobholder against the evaluation points for his or her job. What would we find?

To be sure, we would find a very broad scatter of point-pay relationships, but in a very clear trend showing that pay increases in rough proportion with evaluation points for the organization as a whole. Hay does not claim to have such a universal instrument, but, given the frailties of our method, we have 30 years worth of data to show that on average using the Hay system, as the points go up the dollars go up. Nothing mysterious about that.

Next, suppose we were to dissect the whole and plot a point-pay scattergram one by one for each of the various segments of this large and diverse organization and then calculated a trend line for each resultant array. What would we find? Very probably we would see almost as many different trend lines as there were segments.

For the unionized blue-collar factory workers, there could be as many different trend lines as there

were separate union-management wage agreements. For nonunionized white-collar office workers, we would find lower trend lines generally than for the unionized blue-collar factory segments.

For all nonexempt employees, we would find as many trend lines as there are distinct geographic locations, with the highest line being easily 30 to 40 percent above the lowest line.

For job functions, we would find many differences, with some of the differences being dramatic. At this time, for example, systems and data processing jobs have higher pay lines than personnel jobs. You should have seen what the trend line for petroleum company geologists and so forth looked like a few years ago versus all other jobs.

For profit center divisions in the private sector in a single company, the glamour product divisions, like electronic office equipment, with high trend lines versus the low-tech divisions, e.g., metal castings, with lower ones.

For female-dominated nonexempt jobs in general, usually lower trend lines than for male-dominated nonexempt jobs, possibly even where both are in the same union in the same location.

For management, executive, professional, and technical employees, generally no systematic differences in trend lines if you plot males against females.

All of this in a single, large, diverse organization in either the public or the private sector: the same or similar points with substantially different pay in various segments of the same organization.

Now, is this chaotic management? Is it discriminatory management? Or is the organization simply pricing jobs at what it considers to be competitive rates in the various labor markets from which its people are drawn?

The doctrine of comparable worth calls for the same pay rate for the same points in all cases, but it must contend with multiple labor markets with their very high diversity of pay for the same points and the many forces influencing pay levels. Therefore, to achieve full comparable worth would require an organization to override different prevailing rates in different labor markets for jobs that it judged to be of comparable value within its own organization.

In the pay equity debate, the intent of the advocates is openly and unashamedly to increase the pay of women. But the laws as written are very broad and specify differential pay only for seniority, performance, and the like. Thus, it would appear that under the comparable worth doctrine, all organization segments would have to be paid on the highest trend line selected for any segment.

Now, if all pay lines in an organization must rise to equal the highest one, we can foresee a host of all new issues. For example, would unions give up their right to negotiate contracts independent of the pay arrangements in other segments of the same organization? For example, would unions *B, C, D,* and *E* have to agree to the same point-dollar relationship as union *A* which signed the first agreement? If the individual unions negotiated jointly with management for the same point-pay relationship, would there be any need for more than one union?

How would an organization entice people into jobs where there were shortages, for example, because of distasteful work, if there were not premium pay for the same points or maybe even more pay for fewer points?

Would company division *A,* which pays only a salary, have to increase its compensation level if company division *B* very wisely introduced a motivational incentive plan which was suitable for the business sector in which it competed?

Must the State pay the same dollars for the same points to employees who work and live in a low-cost rural area as they do for employees who work and live in high-cost cities?

Must a high-tech company raise the pay of its accountants, normally a male-dominated job, to equal the pay of its engineers, also male-dominated, for the same points?

In the pay equity debate, the advocates raise the issue of simple fairness. For example, any thoughtful person would have to wonder about the fairness of the pay of college-trained nurses and librarians versus the pay of semiskilled auto and steel workers, at least before the give-backs in the last year or two.

The labor market is full of this sort of thing, even where sex domination either does not exist or where it is clearly not a factor. Look at professors of physics and engineering versus their own recent former students who take jobs in Silicon Valley. Highly skilled professional athletes versus highly skilled surgeons. Musicians in a professional symphony orchestra versus skilled craftsmen. State Governors versus company presidents.

Try this on. Successful female models, aged 15 to 20, versus almost any other successful people of comparable age with comparable skill, effort, and responsibility. The list of seeming anomalies in the labor market is really endless.

None of this is to suggest that we see nothing that looks like discrimination in the labor market, because we do. None of this is to suggest that we see the labor market as being entirely free, because it's not.

We are concerned that in our haste to address the issue of fair pay for women, laws are being passed which may open a Pandora's box of serious new problems before we have had time to thoroughly analyze and think through the probable and potential consequences of our actions.

Thank you.

CHAIRMAN PENDLETON. Thank you. I should have said in the beginning we are trying to stick to this 20-minute time frame. One person blessed us with a 15-minute presentation, and we would take other blessings. Give us a chance to get to the questions and answers.

Thank you.

Dr. Schwab.

Statement of Donald P. Schwab, Professor, Graduate School of Business, and Industrial Relations Research Institute, University of Wisconsin—Madison

DR. SCHWAB. If I don't bless you, remind me when 20 minutes transpire.

CHAIRMAN PENDLETON. I'm not looking for guarantees, I'm just—

DR. SCHWAB. I understand our task is to discuss pay-setting practices in organizations, to discuss the role of job evaluation in that process, and to discuss the changes that comparable worth implementation would have in those current pay-setting processes.

So I would like to organize my discussion as follows:

First, I'd like to talk a little bit about what organizations currently seek by way of pay-setting objectives and the sorts of procedures they use to achieve those. Second, we look at changes in practice proposed by advocates, and finally, I will speculate on the implications of such changes and raise some issues that need to be considered in this context. However, I want to emphasize that I'm talking just about micro firm-level issues rather than macro issues that other people have or will speak on at this conference.

I think it's important to note at the outset that the comparable worth issue raised does not include, by any means, all of the pay-setting issues that organizations are concerned with. It does not address the question, as Alvin [Bellak] said, of individual pay equity. It does not address the question of pay level, the amount of pay. It is specifically focused at the question of pay differentials. On what basis should differentials be made in the payment, not of individuals, but of jobs?

To understand how organizations currently pay jobs, it is helpful to think in terms of two levels. Differential job payment is a very complex issue; it is hard to communicate, and it has been hard for some people to understand.

At the first level, organizations define equitable job pay differentials in terms of external markets. What is a nurse worth? A nurse is worth what the nurse can command in the external market. What are carpenters worth? They are worth what they can command in the external market.

Now, this sort of definition, this first-level cut, if you will, has at least three advantages for organizations. First of all, there is a relationship between market wages and productivity. We have ample evidence that organizations do make substitutions between capital and labor, and they make substitutions between various kinds of labor as a function of the productivity and cost of those resources. Consequently, wage rates tied to the external market allow firms to operate in a competitive fashion.

The second advantage is that externally competitive wages allow the firm to attract and retain a labor force. And, thirdly, at least until comparable worth advocacy, wages related to external markets were perceived as equitable by employees in general. And one point that Alvin made that I want to reinforce is that compensation systems, with all the judgment involved, are acceptable ultimately to the extent that they are acceptable to the employers who pay them and are acceptable to the employees who receive them.

That is a first-level explanation only. If all labor markets operated as nicely as hypothesized in economic theory, firms really would not use any other criteria. We probably would not have the objections to the use of external markets, market rates, as we now do.

The second level of explanation involves recognition on the part of firms that there are imperfections in external labor markets, markets that are institutionalized, if you will, in various ways. There are rules and constraints which operate which are not consistent with the hypotheses of economic theory.

Some of these constraints are external. Unions would be an example. A regulation would be an example. But some of these constraints are internal, the way the organization sets up its personnel policies about other activities that affect employees. The sorts of technologies that organizations use also serve to constrain pay activities.

The result of these sorts of constraints operating in labor markets is that we do not have just one type of labor market, but many types. Some of those markets operate very much as economic theory would predict. People move from organization to organization as a function, at least in substantial part, of the wage that they are offered. But some markets do not. And one very important type, important both in the sense that it is really the kind of labor market that comparable worth advocates have focused on, and important also in the sense that it constitutes a fairly large number of jobs, is an internal labor market associated with large firms, governmental units, large private organizations.

In this kind of labor market, the firm very often becomes a part of the market itself. What happens is that access to internal labor markets occurs only at entry-job levels. Entry-level production jobs, entry-level managerial jobs, entry-level clerical jobs, and what-have-you.

These so-called ports-of-entry jobs operate very much like you would expect the external labor market to operate. But above these jobs people get access, not from the external labor market, but through the internal labor market, through promotions as a result of seniority, merit, or some combination of the two.

Consequently, we see a range of jobs, a range from pure market jobs, on the one hand, to jobs that are unique to the particular employing organization. There may be no analog to the latter jobs in other kinds of organizations.

In the case of the first kind of job, the market job, the firm is essentially a wage taker. The firm pays what it has to pay in order to attract people into the organization. In terms of more unique kinds of jobs, the firm determines wages. It makes decisions about what wage rates ought to be.

It is in this kind of a labor market that firms in the private sector sometimes use job evaluation. And when they do so, there is a very wide range of procedures that they might employ. Nevertheless, we think most private sector firms evaluate jobs on so-called compensable factors. Although factors vary across firms, there is a lot of copying that goes on. Moreover, the first prominent systems tended to focus on skill, responsibility, effort, and working conditions. Thus, these compensable factors occur time and time again.

You are already aware that those four factors are institutionalized in the Equal Pay Act. It is my understanding that they were put in it at the encouragement of business as a way of defining equal worth. You will also recognize them as criteria of equity that have been proposed by many comparable worth advocates.

The point I want to make here is that the proposed use of these compensable factors differs very markedly between the current practice of organizations and the practice that comparable worth advocates would recommend.

In the private sector, firms link—weight, if you will—these factors to market wage rates for the jobs that are actually linked to the external labor market. In the most formal sense, the procedure is referred to as "policy capturing," as you will see in Ronnie Steinberg's paper.

In policy capturing, the key-job wages (market wages) serve as a criterion for the job evaluation system. The policy of the market is captured through the wages for these key jobs. That policy, then, is applied to nonkey jobs for purposes of making payment differentials. We are not sure (one of the problems that we have in this area is the paucity of research) how many firms go through this formal policy-capturing sort of procedure. The interim report of the National Academy of Sciences said it was a "standard practice," but it is not clear what that means. And I suspect it is not clear, because they did not know, either, the extent to which firms go through this formal policy-capturing approach. But even when organizations do not go through this formal practice of linking, weighting, compensable factors to the external market, they still do it informally.

Unless the job evaluation system leads to results that are fairly consistent with external market wages, firms are simply not going to find them acceptable. And they will make appropriate adjustments until there is a fairly close fit between what their job evaluation system says, on the one hand, and what the market wage rates are, on the other.

Now, comparable worth advocates recognize—as I am certainly well aware; as you are certainly aware—that there is a substantial differential be-

tween wage rates paid for predominantly male jobs versus predominantly female jobs. They have further concluded that at least some of that differential is a function of discrimination. Thus, they generally reject the use of the external market as a criterion either for job evaluation systems or for other ways of compensating employees.

The most common recommendation by advocates is to replace the use of the external market and to use the compensable factor scores alone. In a sense, they are looking at the notion of internal equity, internal equity here defined by these compensable factors.

Now, we have a conflict, obviously. Firms see equity in terms of the external market. Comparable worth advocates see equity in terms of the internal market.

I want to say a little bit more about job evaluation. I want to stress that job evaluation is an inherently subjective set of procedures. The number of judgments made when installing and maintaining a job evaluation system is truly enormous. A sample of such judgments is offered in the paper, so I will not elaborate on them here. But as a consequence, job evaluation systems can essentially yield any result you want. Firms use job evaluation systems to reproduce the market, and they are very successful at doing so. And there is a good bit of literature to show that you can develop and install a job evaluation system which would be highly, very highly, related to external market wages.

Recently, advocates using what they refer to as comparable worth studies, but what are essentially job evaluation studies, have been very successful in finding sex-based discrimination. There is no problem getting the results that you want from job evaluation.

A specific question asked of our panel was: Could job evaluation identify discrimination? The answer is, obviously, no. You can get anything you want out of job evaluation. The problem is to get results that are satisfactory when different groups want different results. That is the difficulty that we are confronted with in this comparable worth issue.

The issue, it seems to me, at the bottom is one of values. What should be the criterion for setting pay differentials? Should it be the external market or should it be internal job content related? Or should it be some other criterion? That value judgment is ultimately going to be decided by societal values.

The consequences, however, can be empirically estimated. We do not know the first-order cost of comparable worth implementation because we are not certain exactly what that entails. But I was at a conference recently with Heidi Hartmann, one of the coauthors of the final report of the NAS, where she was asked whether she thought an appropriate objective would be to increase the average wage of females to the average wage of males. She indicated she thought that was an appropriate kind of objective.

Now, if you did that, and if you assume that women earn 60 percent of men on average, which is the standard figure thrown around, and then using 1983 labor force data and total compensation figures, the increase necessary would add roughly $413 billion to the Nation's yearly wage bill, other things being equal.

Now, other things obviously would not be equal. But the cost would be substantial. Before substantial changes in organizations' wage-setting policies are made, it seems to me that there are a number of issues that need to be investigated further. You will hear—you have heard, I am certain—much disagreement between the various speakers. Certainly, a lot of that is a function of differences in values. But a lot of that is a function of our collective ignorance. We simply do not know the answers to a lot of important questions.

Now, to date, it is my understanding that the Federal Government has funded the National Academy of Sciences' study. I think that was a $300,000 study; at least, I know it was less than $1 million. And that was essentially a literature review, a literature review of econometric studies of discrimination and a literature review of job evaluation. Without getting into the econometric studies, in the job evaluation area, they found, first of all, very little research; secondly, the research for the most part was very dated, and by that I mean 40 to 50 years old; and thirdly, much of it was irrelevant to the issues that are now important.

A couple of examples of our ignorance—and, again, the paper elaborates on this some. We do not know very much about the extent to which job evaluation is used in the private sector. Although we know something about the specifics of how organizations implement job evaluation initially, we do not know very much about how they maintain those systems over time. And we do not know of the link, if any, between internal job content factors, freed from the market, and productivity.

We have a very serious issue here. The charge of discrimination is an important one, and the evidence to date would suggest that it certainly cannot be dismissed out of hand. But the solution proposed raises many questions about consequences, not only about intended consequences, but particularly about unintended consequences. And to serve my self-interest as an academic, I hope out of this session the Commission would recommend that substantial resources be allocated to address these issues.

Thank you.

CHAIRMAN PENDLETON. We're blessed. Thank you very much, Dr. Schwab.

What was that thing about resources that you said? What was the last statement?

DR. SCHWAB. Substantial.

CHAIRMAN PENDLETON. Substantial.

Dr. Northrup, welcome.

Statement of Herbert R. Northrup, Professor of Industry and Director, Industrial Research Unit, Wharton School, University of Pennsylvania

DR. NORTHRUP. Thank you. I'm pleased to be here. The previous statements have put a great strain on me. To get an academic to talk and say something in 20 minutes, I think the Commission has made a great accomplishment. Usually we're timed automatically to talk either 50 minutes or 120 minutes, an hour and 20 minutes, depending on how long the class lasts.

However, I also come from a family that had a minister in it. And this old gentleman once told me that if you can't convert them in 20 minutes, you just have to let them go to hell. So I'll do my very best to stay within the lines.

My interest in this subject comes from two areas that I have spent 40 years trying to find out something about, and that is discrimination in employment and labor relations. And the two come together on this because both are very definitely involved.

The comparable worth issue comes from the fact that the other speakers have mentioned, that women are earning substantially less than men. This doesn't mean that that's due to discrimination, but I think there is evidence that there is discrimination in the labor market.

Comparable worth is extremely important because it threatens, if ever put into effect, to completely upset the labor relations system of the country. And this, I think, is very serious.

Comparable worth is an ill-defined concept which means many things to many people. I thought the definition given by our first speaker was almost one which made comparable worth into equal pay for equal work. It does not mean that to most people.

Rather, as I understand it and, again, this illustrates some of the problems that our previous speakers were talking about, because other people may not even agree with the definition—but comparable worth to me relates jobs that are dissimilar in content, for example, the office worker and the building craftsman, and purports to demonstrate that if such jobs are of equal value to the employer or to society, then such dissimilar jobs should be equally compensated.

We run into the fact, of course, right away as to whether worth can be defined. Many of the older economists, even those beyond my time, wrestled with this question. The Jesuits wrestled with it in terms of what they called a just wage, and they got into deep metaphysical arguments. They never could even agree among themselves what a just wage is.

As a matter of fact, the first thing I tell my students is there is no such thing as a fair wage. It's only a matter of opinion. Most people think they are underpaid. Most employers think they [employees] are being paid too much. And there is no objective criterion to determine who, if either, is correct.

Now, it is very important to understand—and if you have ever been in labor relations situations, like I have, it comes to you very directly—that wage and salary administration is not done in isolation from other aspects of personnel administration. It is necessary not only that companies compensate employees in a manner that both they and the employees can live with, but also that that compensation be related to in-plant upgrading programs.

These in-plant upgrading programs did not start with unions, because as soon as you put people together in an aggregation, there has to be a system to get people to learn the job above them and to help the persons below them learn their job. You have natural progressions that are quite different in each industrial enterprise that basically are related to the structure of the industry.

For example, the auto industry has a very flat wage structure, because about 85 percent of the employees are semiskilled, and competence on one job is easily learned when you're in another job. Most employees are either assembly line workers or

machine tenders, and it is not difficult to go from one to another, indeed, from one plant to another.

Now, this is highly different, say, in the steel industry, where you have long narrow lines of progression, because competence in one phase of the business doesn't teach you at all how to run jobs in another phase of the business.

The same is true in the paper industry. In the paper industry, you can be a first-class machine tender, the top and highest paid job on a paper machine, and know absolutely nothing of how to operate a job in the pulp mill. It's in an entirely different structure.

Now, how you relate that to a worth system, based on what I would call a metaphysical idea of what a job is worth outside of the labor market, becomes not only a very perplexing thing, but begs the question of who will do it. Basically, as we have seen in the Washington case, we have judges or equal employment administrators charged with the job of setting wages. With all due respect, I do not know of any group less qualified to do the job, because they are not familiar with the bargaining process, the wage-setting process, the structure of industry. I have been an expert witness in a number of equal employment opportunity cases. In these cases I have begged the judge to go out and look at the jobs, and I have never been successful. Some of them have done pretty well, but they remind me of my young days when I was working for the War Labor Board during World War II.

It was very interesting because I did not know what I was doing. Yet, these companies and unions came in. They had 60, 70 issues, and they would throw them to a person like me, who was then a very nice young man and totally illiterate, and I would have to decide these cases.

Of those 60 or 70 cases, 95 percent were that one particular person was not being paid the correct wage. This became totally untenable to unions and companies because when they adjusted one wage, all the other people claimed, "Well, we should get adjusted, too, because our job is really more important." And their wage was kind of a social status thing. They were getting more wage than the other fellow, and all of a sudden he was made equal to them. And this they couldn't understand, you see.

This is why companies and unions went in either to formal job evaluation systems or, over the years, what I found to be more informal wage-classification systems, the slotting of jobs.

I have no statistics, either, and Dr. Schwab is perfectly right. We know too little. My experience is most companies have informal systems.

But by 1950 these kinds of disputes virtually disappeared on the large scale, because companies and unions found they could not develop relationships if they had to decide all these individual wage settings. It just tore the union apart and it drove the company bananas. It cost a fortune.

Incidentally, that is why the literature has dried up, because it hasn't been in contention until the comparable worth issue came up. That is why you'll find, as Dr. Schwab said, that the literature is 20 or 30 years old, and mostly 30 years old, because the issue was sort of settled. That doesn't mean it was perfect. That doesn't mean there wasn't discrimination, but the issue was sort of settled. And you won't find much help in the literature.

But the point I'm making is that comparable worth threatens to turn wage setting over to third parties who have no particular competence and, more than that, no acceptance by the parties. Without that acceptance—I couldn't agree more with the previous parties—you are headed for chaos, you see. This is the key to the thing.

I also think that comparable worth would greatly raise the wage structure for the same problems we had during World War II and thereafter. You raise his wage or her wage and, by God, I'm going after something for me, because, really, my job is more important than his, and there are no agreed-upon—I didn't say objective; I said agreed-upon—criteria to determine where wages should fall.

So I think any reevaluation will be an upward evaluation. You would, at most, red circle those people whom you don't raise or whom you say are too high. And you'd get a gradually creeping increase. You'll get a great many more labor problems, because the issues won't be settled. They won't be settled in the administration of the contract during the term of the contract. They will come out in the labor negotiations, and they will screw up the whole works. It will all be tied up with internal union politics, one group versus another, and it will all be fun and games.

Well, maybe I shouldn't complain. Maybe there will be more work for us, so forth and so on. They will call on us wonderful, knowledgeable academics to do what we did during World War II, pull a rate out of the air and say, "Now, isn't that nice? It's objectively determined." But I have a feeling now

the parties are more sophisticated, too, and we won't be able to get away with that.

So I don't know if I even have to take 20 minutes, Mr. Chairman. It seems to me that we're kidding ourselves if we think that comparable worth will end discrimination. It will change the players around. It will change the relationships. And it will have some very significant side effects.

One of these side effects will be more labor disputes. A second side effect will be a higher wage structure, an inflationary situation. A third would be to make American industry less competitive worldwide as a result. And the net effect of that will be to prove to a lot of people, I'm afraid, that it doesn't make any difference if your wage is evaluated higher if you don't have a job. And you won't have a job if you escape from market realities. Economics is a sad operation, but it always wins in the end. I think those are the things we had better keep in mind.

Thank you.

CHAIRMAN PENDLETON. Thank you for the blessing and the wisdom.

Miss Steinberg, it looks like you're on the other side of all of this.

DR. STEINBERG. I guess so.

CHAIRMAN PENDLETON. It seems that way in the presentations, but we'll give you a chance to do what you have to do.

DR. STEINBERG. I'll try to hold my own against the opposing points of view and keep to my 20 minutes.

CHAIRMAN PENDLETON. We just try to let you recognize that we recognize what was going on—

DR. STEINBERG. Thank you.

CHAIRMAN PENDLETON. And you're not alone.

DR. STEINBERG. Thank you.

Statement of Ronnie J. Steinberg, Director, Program on Comparable Worth, Center for Women in Government, State University of New York at Albany

DR. STEINBERG. My remarks to you this afternoon draw on the work of the Center for Women in Government in conducting the New York State comparable pay study.

The New York State study is funded as a result of a contract between the Civil Service Employees Association of AFSCME and the Governor's Office of Employee Relations of New York State. CSEA represents approximately 100,000 of the 175,000 employees in New York State government, representing three of its six bargaining units. And this, I think, is very important because the study arose out of the context of the normal relations between labor and management operating within New York State. In conducting and carrying out the study that I'll describe to you this afternoon, we operate within the context of a labor-management advisory committee. The committee makes some of the major decisions concerning study design options.

The Center for Women in Government received the contract in June 1983. We expect to have the study results back to labor and management in early spring of 1985.

I'm the director of the comparable pay study, but I want you to know that I have the good fortune of working with a set of colleagues and consultants as part of a comparable worth team. That team includes Donald Treiman, who was the staff director of the National Academy of Sciences study. The study design and the implementation frame that I will describe to you this afternoon are truly a collaborative effort on the part of the center's comparable worth team.

I also appreciate the opportunity to participate in this consultation around these particular issues because I believe that my experience in working on the New York State comparable pay study can provide useful information on the actual use of job evaluation and econometric forecasting in implementing pay equity adjustments under an evolving policy of equal pay for work of comparable worth.

Before turning to a discussion of the study design, I'd like to open my remarks with a definition of comparable worth from several different perspectives. The policy goal of equal pay for work of comparable worth has evolved to eliminate the wage discrimination that is a byproduct of occupational segregation. Viewed from a policy perspective, comparable worth broadens the earlier policy of equal pay for equal work, which prohibited wage discrimination if women and men were doing the same or essentially similar work.

Conceptually, the policy goal of equal pay for work of comparable worth concerns the issue of whether work done primarily by women and minorities is systematically undervalued because that work has been and continues to be done primarily by women and minorities. By systematic undervaluation, we mean that the wages paid to women and men engaged in historically female and minority work are artificially depressed relative to what those

wages would be if those jobs were being performed by white males.

Operationally, pay equity involves correcting the practice of paying women and minorities less than white men for work that requires equivalent skills, responsibilities, stresses, personal contacts, and physical working conditions.

I want to make five additional introductory remarks.

First, the demand for comparable worth is not new. It first surfaced during World War II in the 1945 case brought to the War Labor Board by the Electrical Workers Union against General Electric and Westinghouse. In this case and a similar one in 1946, the Board decided in favor of the union's position, but the companies ignored the decision. And there is a direct link between this particular case and the 1981 Supreme Court decision in *IUE* v. *Westinghouse.*

Second, despite what some critics contend, comparable worth is not just a white, middle-class women's reform. Comparable worth studies, such as the one we're doing in New York State, examine potential wage discrimination in jobs such as garment worker, launderer, food service worker, institutional caretaker, retail sales worker, and entry-level clerk typist. Such studies seek to differentiate legitimate wage differences from those that are solely a function of the sex of the typical incumbent.

Minority women are disproportionately represented in these jobs as well. Moreover, comparable worth is now being extended to encompass jobs disproportionately held by minority males, even though until recently the question of fairness of wages under this policy was defined almost exclusively as a woman's issue.

In the New York State comparable pay study, for example, estimates of undervaluation will be made for such job titles as youth division aide, window washer, elevator operator, janitor, cook, barber, and busdriver. This is because the processes perpetuating undervaluation are the same, whether the source of differential treatment is race or sex or ethnicity.

Third, comparable worth policy is directed at closing only that portion of the wage gap between women and men due to systematic undervaluation. Not all of the wage gap is a function of this undervaluation.

Some of the wage differences are legitimately derived from differences in job prerequisites, requirements, and responsibilities. However, women may be segregated into lower paying jobs that require equivalent amounts of skill, effort, and responsibility as male jobs. The policy of comparable worth is concerned with those salary differences between women and men that cannot be justified in terms of productivity-related job content characteristics.

To quote the final report of the National Academy of Sciences, "Paying jobs according to their worth requires only that whatever characteristics of jobs are regarded as worthy of compensation by an employer should be equally so regarded irrespective of the sex, race, or ethnicity of job incumbents." In other words, it isn't really a question of deciding what should be the criteria for payment of wages, but that sex and race should not be the criteria upon which wages are paid.

We are not talking about absolute worth or of a universal method of job evaluation. Rather, we are talking about worth to the employer as specified through an evaluation system customized to the nature of work in a particular firm.

Fourth and related to this, since comparable worth is concerned with eliminating only nonproductivity-based wage differences, the standard of worth can be partially based on market wages. This is because, as the National Academy committee concluded, market wages "incorporate the effects of many institutional factors including discrimination." In turn, to achieve equity, it is necessary to remove this discrimination from any final estimates as to what wage rates should be.

Fifth and finally, while this section of the Civil Rights Commission's consultation is concerned in particular with technical and methodological underpinnings of attempts to correct for wage discrimination, comparable worth is less a technical than a political issue.

The very emergence of the issue of comparable worth is both a cause and a consequence of the change in the power position of women in the labor market. The Civil Rights Commission is to be congratulated on its contribution in the 1970s to Federal efforts to stimulate equal employment opportunity for women and minorities.

The considerable progress that has been made on comparable worth demonstrates the power women and minorities are able to command when they organize and press for legal and political change.

I want to turn now to the New York State study design. Comparable pay studies must meet two

objectives. First, they must determine whether the salaries of female- and minority-dominated job titles accurately reflect an explicit and consistently applied job content-based standard of worth or if the salaries are a function of the fact that women and minorities fill particular job titles. Second, studies must pinpoint job titles that are undervalued and, based on this, develop estimates of the potential cost of correcting this wage discrimination.

To meet these objectives, we must build on and adjust job evaluation methodologies to minimize the impact of cultural biases on the salaries paid for historically female and minority work. We are not talking about worth in a metaphysical sense when we do a comparable worth study. Instead, we are talking about worth as defined in classification systems that already operate in large bureaucratic organizations, such as New York State government employment.

The paper I prepared for the Commission reviews, at some length, the use of evaluation systems in existing classification and compensation systems, the ways in which cultural assumptions about women and minorities get built into classification systems, the problems with existing evaluation methodologies as a technique for assessing wage discrimination, and first efforts at using job evaluation in State and municipal comparable worth studies.

Obviously, I cannot summarize that material here. Rather, I'd like to turn right to the New York State study design.

In designing the New York State comparable pay study, we tried to build on the best aspects of previous approaches to job evaluation and introduce methodological improvements in light of criticisms that have been leveled against job evaluation. The study uses what is called an adjusted policy-capturing approach, which involves, first, psychometric techniques of questionnaire construction; second, sociometric techniques of sample selection; and third, econometric techniques of data analysis.

The goal of the study is to examine the effects of sex and race segregation on the setting of salaries for the system as a whole and on a job title by job title basis for the three bargaining units represented by the Civil Service Employees Association.

The study is being carried out in three steps. As a first step, we are gathering information on the job content of job titles through a customized survey instrument and an elaborate employee sample strategy, as survey and market researchers do all the time. Our current design involves administering a highly structured questionnaire to over 15,000 employees in over 3,500 job titles across the State of New York.

The questionnaire, which has now been pilot tested, asks people specific questions about their job, such as: How often do people in your job have to travel overnight on the job? How much control do people in your job have over spending money within a set budget? How much do people in your job do the same thing every day? How many people do you supervise directly as a regular part of your job?

For each question, employees must choose one from among a number of possible responses provided to them. All responses are closed ended, and the same questions are being asked to all employees, whether they are a custodian, a clerk, a personnel administrator, a budget analyst, or an assistant commissioner.

The questionnaire contains over 150 items addressing such dimensions as planning, problem solving and policymaking, managerial stress, client-oriented stress, physical working condition, skills, education, experience, and so on.

In the second step, once we have collected these data, we will analyze them statistically by developing a compensation model for the New York State government employment system. By compensation model, we mean statistically establishing the relationship between wages paid for jobs in the State employment system and the content of these jobs.

In other words, we are talking about the relationship between what people do in their work and what they are paid for what they do relative to other employees who work in the same firm. This is the specification of worth in the New York State government context.

For example, how much is it worth to the State of New York in dollars and cents to have to regularly make quick decisions on your job, to meet deadlines, to tell people things they don't want to hear? How much is it worth to the State to supervise people who do routine work under closer supervision and so on and so forth?

Once we have established these relationships for the State system as a whole, we will statistically adjust this model to remove the impact of what we call "femaleness" and "minorityness." This is the recommended approach of the National Academy of Sciences' final report and has been tested on national data by Donald Treiman, Heidi Hartmann, and

Patricia Roos, as reported in my paper to the Commission.

This procedure will provide us with a corrected compensation model that can then be applied to each female- and minority-dominated job title to obtain a predicted nondiscriminatory wage rate. In other words, we will know what the value of wages would be if the value of femaleness and minorityness to the employer were not depressing the wage rate.

Thus, we will have information that is analogous to the point comparisons associated with other comparable pay studies. Yet, unlike other comparable worth studies, we do not make comparisons between specific male-dominated jobs and female-dominated jobs.

As a third step, once we have provided, on a job title by job title basis, whether or not and to what extent the New York State classification system undervalues the work performed in female- and minority-dominated jobs, we will complete an economic forecast to assess the potential cost of closing any gap in wages which is determined to be related to sex or race segregation. We regard this as one of the most significant components in our project because it will offer labor and management several options for carrying out phased-in pay equity adjustments in a voluntary and efficient manner.

We plan to vary estimates according to different assumptions regarding the amount of time necessary to close the equity gap. Similarly, we will provide estimates according to various orders of priority in closing the wage gap.

Currently, the center's comparable pay study team is in the midst of analyzing data from a pilot survey conducted in eight State agencies and three State facility sites in Albany and New York City. The survey was distributed to over 1,800 employees in 80 job titles. It was designed to test certain methodological issues before conducting the main data collection this fall.

We were very encouraged by the high response rate to the survey. The response rate for the mailed questionnaire was approximately 64 percent. Moreover, as we scanned the returned questionnaires to prepare them for data entry, we were able to observe that employees were able to respond to our questions in a plausible fashion. Few items were left unanswered. The variations and responses across job titles seemed to follow a plausible and expected fashion. Of course, a full assessment of the reliability and validity of the questionnaire awaits a more formal analysis.

I want to turn next to the issue of implementation of pay equity adjustments, which is also discussed at some length in the paper, even though I know that you will be discussing that more fully tomorrow morning.

For the sake of time, let me conclude by saying that the experience from Minnesota, from California, and from Connecticut, based on a national survey recently completed by Alice Cook, professor emerita of the Cornell University School of Industrial and Labor Relations, indicates that pay equity adjustments can be and have been achieved in a voluntary fashion, without visible economic dislocation in the local labor market. I'm sure Nina Rothchild will talk about that tomorrow morning.

In Washington State, where a lot of hoopla has been raised, if we were to correct all the pay equity adjustments in 1 year without backpay, to do so would involve only 5 percent of the current personnel budget. That is an estimate that was made by the State's manager of standards and surveys. It is the backpay award that renders the Washington decision costly. And I can't see it as the advocates' fault that the State failed to implement the results of three studies it commissioned.

Thank you.

CHAIRMAN PENDLETON. Thank you.

All of you have done well. Everybody is trying to do something different. But just let me ask you a question. I mean, I don't care where it comes from. Is there some absolute definition or some absolute point of zero in the term discrimination? Do you all see it to be the same thing, discrimination in terms of employment?

I'm at a loss—some people have one definition of discrimination; some may have another. I'm trying to find out if there is some measuring point. What is it that we are talking about?

DR. NORTHRUP. I don't think it is absolutely measured. If it were, you could write in the law saying if you do this, this, that, and the other, and you define it.

For example, in the very interesting presentation by Dr. Steinberg, she said that they are going to apply this formula to all female- and minority-dominated jobs. Right? Why not apply it to white-male-dominated jobs?

CHAIRMAN PENDLETON. That wasn't my question. But—

DR. NORTHRUP. Yes. So this raises the question, maybe some of the white males could say, "Well, that's discrimination."

CHAIRMAN PENDLETON. We have a group called eastern and southern Europeans that are saying that.

DR. NORTHRUP. Yes. You know, we get into perceptions here, deeply into perceptions. There are some things that are so obvious that it's clear, but then you have a huge gray area.

DR. STEINBERG. You know, one of the things that puzzles me when we get into issues and questions of what constitutes discrimination in an abstract sense is that we seem to forget or overlook the history of the regulations and guidelines that were developed in the 1960s and the 1970s under Title VII of the 1964 Civil Rights Act. When we talk about what constitutes discrimination, we talk about what constitutes discrimination under the law and what constitutes discrimination under Title VII of the 1964 Civil Rights Act.

You will probably be spending a great deal of time tomorrow at your session that focuses on legal definitions and legal implications of comparable worth as to whether or not there is as yet a legal basis for comparable worth under Title VII of the 1964 Civil Rights Act.

Fortunately, the New York State study does not require that there be a legal basis under Title VII for doing a wage discrimination study, because our study was funded out of a desire on the part of labor and management to correct something that it believed was operating in its own classification system. To define discrimination for the purposes of this study, we built on our understanding of the way in which occupational segregation operates in the State of New York classification system to depress the wages paid to female- and minority-dominated jobs.

We have designed a methodology to address the sources of undervaluation in that system and to adjust it statistically for the purpose of correcting the wage rates within that system. I can go through how we are doing that in some detail. It constitutes about 15 pages of my paper.

But it seems to me that we are operationally building a model of discrimination from an understanding that, when a classification system leads, for example, to paying a supervisor of nurses less for the act of supervision than a supervisor of health systems analysts or a supervisor of budget analysts, that constitutes wage discrimination because everybody who supervises should receive the same rate of return for the act of supervision.

CHAIRMAN PENDLETON. Just one little question, Dr. Steinberg. How do you design a model for that kind of statistical analysis? I mean, how do you do that?

DR. STEINBERG. I talk about that at great length in my paper.

CHAIRMAN PENDLETON. I don't understand how you do that.

DR. STEINBERG. Okay.

CHAIRMAN PENDLETON. Shall I read the paper again and maybe I can understand, or—

DR. STEINBERG. No, no, let me try to summarize it. The New York State classification system already operates by establishing a relationship between what people do on their jobs and what they are paid for performing the job. This system of job evaluation has been operating in New York State for 30 years. The methodology that we are developing will enable us to examine the current classification system in order to adjust it where there are two standards of worth or two equations for connecting what people do and what they are paid—one equation for white-male-dominated job titles and a second equation for female- and minority-dominated job titles.

DR. NORTHRUP. But did you ever consider that maybe the white males are overpaid, or are you just working it in one direction?

DR. STEINBERG. Well, one of the approaches that's involved in a policy-capturing technique is to say that if the current wage policy of New York State operates within a given set of parameters formalized as a classification system with job descriptions and grade levels that directly translate into wages, that classification system should be applied consistently across all jobs. I want to be sure that, in my comparable worth study, I have developed a survey instrument that captures completely and consistently what people actually do in every job in New York State government employment.

CHAIRMAN PENDLETON. I want to give this to Dr. Berry, but I just want to ask, maybe develop the point—are you saying, then, that with the two systems or two classifications that you mentioned, as they exist, that is prima facie evidence of discrimination?

DR. STEINBERG. No. If it were prima facie evidence of discrimination, I wouldn't have to do the study.

CHAIRMAN PENDLETON. Okay.

DR. STEINBERG. The study is being done in order to assess whether and to what extent undervaluation that we believe may be operating in the system is, in fact, operating and to do so in a precise and specific way.

CHAIRMAN PENDLETON. Okay.

Dr. Berry.

COMMISSIONER BERRY. Yes. Mr. Bellak, when I listened to your talk and read your paper as well as Mr. Schwab's—but I'll just ask you the question—I wondered if my recollection was accurate, that at the time the Equal Pay Act was under consideration by the Congress, that a number of employers insisted in the debates, in the discussion, in the testimony, that evaluation studies, job evaluation studies and job evaluations in classification systems that were in existence in private industry and elsewhere are to be understood as having some value in figuring out what equal pay for equal work might be. Because when you talked about it, it seemed like it was very arcane science and that nobody really understood how to evaluate anything, and you weren't really sure as to how to evaluate jobs and yet be suspicious of it.

The other thing I wondered is, I used to administer various operations, and I used to have job evaluations and companies coming all the time selling their services to me, which I bought, by the way, on benalf of the company, to evaluate the whole—all tbe jobs up and down in the organization. And we even made some pay equity changes as a result of their studies.

But am I to understand that in the last 20 years something has gone awry with job evaluation, and now it's so difficult to do that we can't apply it in this area of comparable worth or have any assurance that it works in other areas either?

DR. BELLAK. No, there is nothing terribly arcane about job evaluation. Anybody who works within an organization structure can learn to do it. And I trust you will understand I am not against job evaluation.

COMMISSIONER BERRY. I wondered about that.

DR. BELLAK. Yes. I told my partners if I write this paper, the first thing people are going to say is, "Hay is against job evaluation." I trust you will think about whether I'm suicidal or not.

No. Job evaluation is neat stuff. We do it; other people do it. It's not that hard to understand. It takes a little effort, but it's not that hard.

My concern is if you pass laws like the ones that have been passed so far, how do you implement them? And if a job evaluation system can only function because people agree with the process and the result, and then you subject that process to legal challenge by those who don't agree with what came out of it, what do you do next?

It's a terrific process. It works fine. The company and the people have common agreement on the compensable factors. They set up a process; committees do the evaluations; and then they get up from the table and say, "Gee, we like what we have done and we will live with it."

As long as it is voluntary, it's very useful. We get hired because things are out of hand in these companies. They have no process. We bring process. They actually do the evaluations. We teach the game. We coach them and then we step out. And when it's finished, they are satisfied. It's voluntary, you see.

COMMISSIONER BERRY. If I may interject, then, am I to understand that you would feel that if someone wanted to file an equity complaint of some sort based on a voluntary existing job evaluation process in a company and a claim that they were unfairly treated within that system, you would find that less objectionable than going out to do a job evaluation study as the result of a complaint by someone that they, in fact, felt that they were being discriminated against?

DR. BELLAK. Everything works fine until the law gets into it. In the private sector, where they have some sense of a voluntary job evaluation system, voluntary meaning the company says, "Look, we'll do it this way if people go along with it," or the company and union agree, and then they both go along.

The evaluation committee does the work; it goes through successive reviews. Some of the people don't like the output. They have some kind of an appeal process. You see, it's not a dictatorial thing. The common complaint is the committee couldn't have understood my job or this family of jobs and given it such a low evaluation.

So there is a process. People will perhaps get new job descriptions, they will be resubmitted, and then, as best they can, a committee of different people will make another judgment. And then it's done, you see. That's as much process as they need.

Time goes by. The jobs change; the company reorganizes; responsibilities are shifted, added, sub-

tracted; and they just keep this process going. They keep on reevaluating according to the standards they set up, and there is always some kind of an informal process for appealing, and life goes on.

Once you interject the law, either by saying, you know, that you must do certain things or allowing anybody to go to court anytime he or she doesn't like the points, the whole thing will fall apart. It can only stay together by agreement.

It's not like a physical scientist measuring something to a billionth of an inch. There is no argument; it's done and that's it. Job evaluation hangs together only by agreement.

COMMISSIONER BERRY. The last question I have, Mr. Chairman—

CHAIRMAN PENDLETON. Okay.

COMMISSIONER BERRY. There was an article in the April 16, 1984, *Wall Street Journal* about some major American corporations that had signed the Sullivan principles, Reverend Leon Sullivan's principles for corporations that do business in South Africa, called the Sullivan principles, and a number of these are major American corporations, about 125 of them. It includes Mobil Oil; it says here in their article, PepsiCo—

CHAIRMAN PENDLETON. Xerox?

COMMISSIONER BERRY. —big corporations in the private sector. And the principles that they had signed, one of them I thought was very interesting, is that they provide equal pay for all employees doing comparable work, which would indicate to me that either they know how to measure comparable work or they think they do or they signed the principles misunderstanding what it was or something. Do you think it would be worth our time, based on what you know about job evaluation and how corporations operate, to try to find out what they meant when they said comparable work?

CHAIRMAN PENDLETON. I'm not so sure—

DR. NORTHRUP. Excuse me. Did they say "worth" or "work"?

COMMISSIONER BERRY. Work. Comparable work.

DR. NORTHRUP. Work?

COMMISSIONER BERRY. Yes. What I am suggesting is they must at least know what comparable work is. And I'm wondering if you thought it would do us any good, you who deal with evaluations, to try to figure out what they meant, at least in this instance.

DR. BELLAK. I know just a tiny bit about it. My understanding, and I really will not speak with any authority on that, is that the American companies working in South Africa had claimed that they had been good for the country, and specifically on this sort of stuff, that they have given the blacks the same pay for doing the same work as the whites. And, as we know, in South Africa that is not the common practice.

I really think that that's the extent of what that article is about. But, again, I can't testify with great personal knowledge. But I'm pretty sure

COMMISSIONER BERRY. Well, it says equal pay for all employees doing equal work or comparable work. That's what it says.

CHAIRMAN PENDLETON. I just want to make sure that the reporter understands the word is work.

COMMISSIONER BERRY. Comparable work.

CHAIRMAN PENDLETON. And not worth.

As we get into this, I'm not so sure that the Congress would allow us to go to South Africa to investigate.

COMMISSIONER BERRY. I'd like that, but not now, though.

CHAIRMAN PENDLETON. I move to Commissioner Abram.

VICE CHAIRMAN ABRAM. I think, Dr. Steinberg, if I understood your response to the Chairman's question, you have thrown a good deal of light on the issue, at least as it exists in the context of what you are doing for the State of New York.

DR. STEINBERG. Yes.

VICE CHAIRMAN ABRAM. And what I understand is, and see if I am wrong, is that quite apart from any purposeful discrimination on the basis of race or gender, you believe the thesis of your operation is that you believe there should be comparable pay for all work which is comparably rated by persons expert in the rating of it; that that's justice?

DR. STEINBERG. We're not using—okay, I'm getting confused in a sense in terms of the notion of raters. We're not having anybody rate a job.

VICE CHAIRMAN ABRAM. I understand.

DR. STEINBERG. But the larger question you are raising is whether or not the hypothesis I'm starting out with in the study is that, to the extent there is an inconsistent application of New York State's values, as expressed in wage rates, or an incomplete assessment of job descriptions, which leads to paying female-dominated jobs lower wages, that constitutes wage discrimination.

VICE CHAIRMAN ABRAM. And that's without regard to race or gender or any of the other invidious factors?

DR. STEINBERG. It's completely in relation to the race or sex type of the job.

VICE CHAIRMAN ABRAM. Well, now, [illegible] jobs are not concentrated, if the lower paying job, which you have assigned a higher rating, is not segregated by sex or race, you're not concerned with it?

DR. STEINBERG. For the purpose of the study as it has been defined under the contract, we will only be doing these undervaluation estimates for those job titles defined as female dominated or heavily minority encumbered.

VICE CHAIRMAN ABRAM. Well—

DR. STEINBERG. But the methodology has the capability of assessing all jobs with respect to the models.

VICE CHAIRMAN ABRAM. Are you—

DR. STEINBERG. However, it seems to me, then, that the additional analysis is legitimate if there is a belief that discrimination is operating in relation to a particular group. If the particular group is not a protected class, it's up to group members and other concerned people to broaden the concept of discrimination under the law.

VICE CHAIRMAN ABRAM. All right. You are a very learned person in this field.

DR. STEINBERG. Thank you.

VICE CHAIRMAN ABRAM. Do you feel that the concept should be broadened, as a matter of public policy, to embrace an evaluation in which people, regardless of their race, color, or creed or in jobs that are lower paid but higher rated, should have their pay raised, as a matter of public policy?

DR. STEINBERG. Are you asking me to speak as an expert or as a citizen?

VICE CHAIRMAN ABRAM. Well, as an expert.

DR. STEINBERG. I don't think that as an expert I can answer that question.

VICE CHAIRMAN ABRAM. All right. As a citizen, then.

DR. STEINBERG. As a citizen, yes, I believe as a matter of personal principle that individuals who are in low-paid positions, regardless of race or sex, national origin, or the like, should be paid fairly on the labor market. But as Professor Northrup has said, the labor market is not necessarily fair in the allocation of wages.

VICE CHAIRMAN ABRAM. And you—

DR. NORTHRUP. I didn't say that.

VICE CHAIRMAN ABRAM. As a citizen, then, you feel, and this is what I gather you're saying, first, that it is possible to use experts to do the rating by all kinds of surveys and subject—

DR. STEINBERG. No, it is possible to use experts to establish empirically what actually operates in a particular labor market. This is similar to, for example, what a pollster does. A pollster goes out and he or she earns money from a particular candidate, whether or not that particular pollster personally believes in or prefers that candidate. Yet, that pollster is capable of going out and assessing public opinion ratings for the purpose of the candidate's developing an election strategy. After all, public opinion can be empirically assessed.

VICE CHAIRMAN ABRAM. Dr. Steinberg, hear me carefully now.

DR. STEINBERG. Okay.

VICE CHAIRMAN ABRAM. Because I really would like to get your opinion. You believe from your experience and your education that it is possible to fairly rate compensation schemes related to given jobs by some kind of a system outside the market and by the use of experts who use various techniques?

DR. STEINBERG. It's not outside the market. But I do believe there is a methodology for empirically understanding market dynamics.

VICE CHAIRMAN ABRAM. Who are the people who can give us guidance in this? Tell us who they are. What kind of talents would they have?

DR. STEINBERG. The experts or the—

VICE CHAIRMAN ABRAM. Yes, the experts.

DR. STEINBERG. They would be able—

VICE CHAIRMAN ABRAM. Psychologists or sociologists?

DR. STEINBERG. Well, I think, in order to do it properly, one has to draw on methodologies from at least three disciplines.

VICE CHAIRMAN ABRAM. All right.

DR. STEINBERG. Because it involves psychometric techniques of questionnaire construction, sociometric techniques of survey sampling theory, and econometric techniques of data analysis.

VICE CHAIRMAN ABRAM. All right. So, what you're saying is as a citizen you believe that persons who have the psychometric techniques, sociometric techniques, and econometric techniques are, in your judgment, able to work a fairer system of compensation across the board?

DR. STEINBERG. Well, first of all, I don't think it logically follows that anybody who had any combination—

VICE CHAIRMAN ABRAM. Well, I mean the experts who have these—

DR. STEINBERG. —but the people who bring those methodologies to bear on a particular problem may be able to bring enlightening findings back to a labor-management committee, or a legislative task force, or a court, who can then determine whether or not wage discrimination is operating in that particular labor market.

VICE CHAIRMAN ABRAM. Have you thought very deeply or long about what it would mean to have wage scales established in this country, even absent discrimination in the conventional sense, by the most learned people who practice psychometrics, sociometrics, and econometrics?

DR. STEINBERG. I don't think the idea that social scientists bring empirical findings back to policymakers means that those social scientists are setting an inflexible wage policy. I don't think that follows.

VICE CHAIRMAN ABRAM. Have you studied, for example, the experience of this country using wage controls as a method of setting wages?

DR. STEINBERG. Yes, I have, and I don't think it bears much relation to what we're doing here.

VICE CHAIRMAN ABRAM. It is government intervention in the mechanism of establishing wages; isn't it?

DR. STEINBERG. Governments intervene all the time, in establishing a minimum wage, for example.

VICE CHAIRMAN ABRAM. Well, that's not my—

DR. STEINBERG. But it is government intervention in the wage-setting process.

VICE CHAIRMAN ABRAM. Please, ma'am. It is—both of them have the model of government intervention in the field; do they not?

DR. STEINBERG. Yes, and so does the minimum wage; so do child labor laws.

VICE CHAIRMAN ABRAM. I understand.

DR. STEINBERG. So does Title VII of the 1964 Civil Rights Act.

VICE CHAIRMAN ABRAM. I gather, then, that you feel, if I am expressing your feelings correctly—tell me; if not, tell me also—that what is involved, as a citizen looking for justice and equity, is a reorganization of the way in which wages are established in this country.

DR. STEINBERG. No. No, I disagree with that.

VICE CHAIRMAN ABRAM. You do?

DR. STEINBERG. Yes.

VICE CHAIRMAN ABRAM. Okay.

DR. STEINBERG. And I disagree with that because in the New York State context and in most public sector work organizations—Federal, State, county, and municipal—some form of classification system with more or less formal allocation of positions into job titles already operates. These systems are already used as a basis for allocating jobs across a wage structure.

When we are undertaking a comparable pay study, we start at the point at which work organizations already operate and use their own methodologies to seek adjustment in the procedures that they already use. We are not reorganizing the way wages are structured in the society. We are using the very technologies already in use and adjusting them to eliminate discrimination.

CHAIRMAN PENDLETON. What is the difference?

VICE CHAIRMAN ABRAM. Who is doing the adjusting?

DR. STEINBERG. We did not develop job evaluation for the purpose of correcting discrimination. We're simply applying methodology that is already in use.

VICE CHAIRMAN ABRAM. In your model, who makes the decision?

DR. STEINBERG. The policymakers.

VICE CHAIRMAN ABRAM. All right.

DR. STEINBERG. Not the technicians.

VICE CHAIRMAN ABRAM. The policymaker for the government?

DR. STEINBERG. If it is a government employment setting, where there is no labor union, it would be the employer. In a labor setting, depending on the labor contract, it could be labor and management.

VICE CHAIRMAN ABRAM. Now, ma'am. I know we do not in our State—you do not share a State with a football team operated by any State university that I know of.

DR. STEINBERG. I wouldn't know about that.

VICE CHAIRMAN ABRAM. But suppose you were in Alabama. How would you work out the salary arrangements for the football coach of the University of Alabama as opposed to the baseball coach, as opposed to the women's basketball coach? What would be fair and a just end?

DR. STEINBERG. I don't think I'm in a position to answer that.

VICE CHAIRMAN ABRAM. Is anyone in a position to answer that?

DR. STEINBERG. Probably someone who would be in a position to examine the situation might be able to answer that, but I certainly wouldn't undertake it.

VICE CHAIRMAN ABRAM. To the satisfaction of Bear Bryant?

DR. STEINBERG. Football is beyond my competence.

CHAIRMAN PENDLETON. Well—

DR. STEINBERG. Maybe one of my other panelists can answer that.

CHAIRMAN PENDLETON. Dr. Schwab, do you want a piece of this one, too?

DR. SCHWAB. Well, I guess I won't talk to the football coach's salary, but I think that the point that I tried to make, which apparently is lost, is that we're talking about values here.

Now, Ronnie says she can use psychometrics, sociometrics, and econometric procedures to come up with some results that they want to come up with. Of course she can. She could use any one of those techniques. We do not need the other two in order to come up with the sort of results that she wants to come up with.

Organizations use job evaluations for different kinds of objectives. The issue here isn't: Is there some magical science involved? There isn't. The question is objectives. And because job evaluation is such a marvelously amorphous technique, you literally can get whatever you want.

So the issue isn't: Is their job evaluation better than somebody else's job evaluation? The issue is: What is it that we are trying to achieve? It's a value question.

CHAIRMAN PENDLETON. I'm unpersuaded with the argument, but I'm going to listen some more.

Mr. Destro?

COMMISSIONER DESTRO. One of the questions I have—and any of the panelists can address this—I would like to address first to Dr. Steinberg because she is involved in the study. I guess my question is that I listened to your use of the existing salary and pay scales—and let me just proceed in steps here so I make sure that I am doing it correctly—and the assumption is that what it's worth is already defined by the present pay scales, right? Am I correct so far?

DR. STEINBERG. So far so good.

COMMISSIONER DESTRO. Okay. Now, is there any attempt made, is there any way to factor out of the data that you are getting how much supervisory skill involved in dealing with an absolutely unreasonable employee might be worth?

DR. STEINBERG. Interestingly, one of the questions on our survey is about how many clients, inmates, or patients an employee is directly responsible for, and then it asks the degree of severity of those clients, patients, and inmates.

It does have questions that deal with how often you have to tell people things they don't want to hear. It has questions about conflict resolution within your unit as a job content characteristic.

Since the unit of analysis for the study is the job, not the individual incumbent, we don't get into such highly individual categories as having a particularly difficult individual to supervise, even though any individual supervisor might have found herself or himself faced with this in the course of their work history.

COMMISSIONER DESTRO. No, I just used that as an example. The reason I asked that is, from what I hear, we're comparing what people are being paid by job title and extrapolating from that to the issue of what each job is worth.

And what Dr. Northrup seemed to say—and he can correct me if I'm wrong—is: What happens if after you've done a whole study and you have decided that *X* amount of dollars for this particular characteristic is not worth it, you would like to adjust it downward?

So aren't you getting a skewed result in the first place by not evaluating the entire category? Because then you're across the range of all State employees?

DR. STEINBERG. We are evaluating the entire range of jobs across all State employees.

COMMISSIONER DESTRO. Okay. But have you ever identified as—we're looking at what they pay now. I don't see the State of New York going in and rank ordering all the job categories and saying here is what each is worth to us.

DR. STEINBERG. Here is what we should be paying?

COMMISSIONER DESTRO. Yes, here is what it's worth to us.

DR. STEINBERG. Even though this is what we are paying?

COMMISSIONER DESTRO. Here is what it is worth to us.

DR. STEINBERG. They could conceivably do that. They may say, for example, "My God, is this what we are paying for? Oh, goodness, we don't want to pay for that," and change the whole wage structure.

It gets back to what Don Schwab said. I don't expect them to change the wage structure. But if they did do that, we could take that new structure of worth and apply it consistently across all job titles in terms of what State employees actually do on their job.

COMMISSIONER DESTRO. Okay.

DR. NORTHRUP. There is a question, though, in your answer Ronnie, that confuses me.

DR. STEINBERG. Okay.

DR. NORTHRUP. I mean, you have put forth the best case I ever heard for comparable worth.

DR. STEINBERG. Coming from you, that's a real compliment.

DR. NORTHRUP. I don't buy it, but it's the best job I have ever heard done, and maybe that's the one we ought to—why it's worth talking about more than anything else.

But you said just a few minutes ago that you are applying this looking for sexist and minority encumbrances. I think you need a better term than that, by the way, but, anyway—

DR. STEINBERG. Some of my colleagues agree.

DR. NORTHRUP. Then the next thing, you answered Mr. Destro and said you're applying it across the board, after we got through with the discussion of Mr. Abram, when you said, well, they can apply it to the poor white characters who aren't being considered if they want to, but we're not doing anything about it.

Now, I think that's a confusion you ought to clear up.

DR. STEINBERG. Okay. We're going to sample 3,500 job titles and receive responses from 15,000 employees. Then, with this information, we're going to analyze it statistically and come up with a compensation model. That, then, becomes some basis for understanding what it is New York State values about the content of people's jobs for the purpose of paying wages.

Having done that, we will then introduce several correction factors statistically. Those correction factors have been put forth in chapter 4 of the National Academy of Sciences' final report. These will remove the value of femaleness from that compensation model; hence, we get a corrected compensation model.

We'll then use the corrected compensation model to predict what the wages of female- and minority-dominated job titles would be if the values of femaleness and minorityness were removed from the compensation system.

COMMISSIONER DESTRO. Well, I guess that's one of my questions here: How do you determine the value of femaleness or minorityness?

DR. STEINBERG. Okay.

COMMISSIONER DESTRO. That seems to me to be one of the key issues because you are quantifying what that kernel of discrimination is, and I'm not sure that I have heard any of the witnesses today tell us that we can even know that. So I want to know where you get that data.

DR. STEINBERG. Where you develop a standard for removing—

COMMISSIONER DESTRO. Right.

DR. STEINBERG. —discrimination from the wages paid in female- and minority-dominated job titles?

COMMISSIONER DESTRO. Right. If you don't know where it comes from, how do you—

DR. STEINBERG. Let's talk about some of the places where it comes from, and then let's talk about the techniques that have been proposed as useful for making adjustments.

There are two sources of undervaluation in classification systems, broadly speaking.

COMMISSIONER BUNZEL. May I interrupt you here just 1 minute and ask a quick question?

DR. STEINBERG. Sure.

COMMISSIONER BUNZEL. Undervaluation in your analysis equals purposeful discrimination?

DR. STEINBERG. No.

COMMISSIONER BUNZEL. Okay.

DR. STEINBERG. Certainly not.

COMMISSIONER BUNZEL. Okay.

DR. STEINBERG. I think some of the examples that I talk about will explain that.

When we talk about comparable worth, there are two sources of potential undervaluation in compensation systems. One is that job titles that are female dominated are not described as fully and completely as job titles that have been historically male dominated.

The best example of this comes not from New York State, but from the third edition of the *Dictionary of Occupational Titles*, which, as you know, is a compendium of occupations in this country. In this resource book, occupations have been ranked in terms of data, people, and things. Employers often turn to this book when they start their firms to figure out how to describe, rank, and

compensate the jobs for which they will hire and pay employees.

In one of those earlier versions, dog pound attendant and zoo keeper were rated as jobs involving higher skill levels in terms of data, people, and things than nursery school teacher and day care teacher. Implicit in this ranking is the assumption that the first set of occupations should be paid more than the second.

A group of researchers at the University of Wisconsin Extension School were puzzled by this. In the 1960s, they decided to reevaluate the DOT according to Department of Labor's old criteria. When they conducted their own evaluations, they got significantly different job descriptions than those obtained by the Department of Labor evaluators.

When the Department of Labor evaluations were compared to those of the University of Wisconsin Extension School professors, it was found, not that the evaluators were malicious or evil people who were intentionally overlooking characteristics of the job, but that, in fact, the evaluators had not thought that the act of taking care of children for a certain number of hours a day was a skill. That, to take another example, typing a certain number of words a minute without error is a skill. Rather, child care and typing speed and accuracy are intrinsic to the essence of being a woman and, therefore, not in need of compensation.

It's as if when we go out and evaluate carpenters or electricians or plumbers or auto mechanics, we say, since all boys learn how to use tools when they are kids, we shouldn't compensate them for the skill of using tools.

As a result of that study, the *Dictionary of Occupational Titles* was revised, and many of those jobs were upgraded in terms of more complete and accurate descriptions of what people actually did on their jobs. That's one source of undervaluation.

COMMISSIONER DESTRO. Okay. One question on that. So part of the problem—and I thought I saw this referred to in another paper—is that, in general, job descriptions are somewhat inadequate in telling people across the board what their jobs involve. So, isn't it equally true that you might go back to the zoo keeper and find out that there are factors that weren't considered there, too?

DR. STEINBERG. Definitely.

COMMISSIONER DESTRO. Okay.

DR. STEINBERG. It's the reason why our study design includes the use of a highly structured questionnaire in which we're asking the same questions of every incumbent sampled.

COMMISSIONER DESTRO. Okay. I'm trying to get a sense of the method. Go ahead.

DR. STEINBERG. This means that the job descriptions will be consistent because we're asking the same questions of everybody. The readability level of our survey instrument is seventh grade.

CHAIRMAN PENDLETON. Okay. Are there any more questions?

COMMISSIONER DESTRO. Well, I didn't get number two.

DR. STEINBERG. Right. You didn't get the second example.

COMMISSIONER DESTRO. No, I didn't get the second factor. You said the first factor was job titles. And then—

DR. STEINBERG. Job descriptions, faulty job descriptions.

COMMISSIONER DESTRO. Right. That was number one, right?

DR. STEINBERG. The second source of undervaluation comes from taking job content characteristics, such as supervision, the skill of public speaking, having to travel overnight a certain number of nights per month, and providing two rates of return in wages for the same characteristic, one rate of return for historically male-dominated jobs and a second rate of return for historically female-dominated jobs.

In other words, the rate of return for the act of supervision, for example, is higher when the person you are supervising happens to be in an historically male-dominated job like budgeting rather than an historically female- or minority-dominated job like nursing.

Comparable worth policy would require one rate of return for supervision regardless of the sex or race of the typical job incumbent. The compensation model we will develop for New York State will establish, for example, what the rate of return is for any particular compensable job content characteristic, like supervision.

COMMISSIONER DESTRO. Okay.

DR. NORTHRUP. You would say—

COMMISSIONER DESTRO. One more—

CHAIRMAN PENDLETON. Dr. Schwab has a point.

DR. SCHWAB. Well, I thought that, and maybe I misunderstood what Ronnie was saying—I thought that she was saying that there is evidence that women's jobs are undervalued in job evaluation

processes. And if that's not what she was saying, I don't have a point. If that's what she was saying, because the only evidence I'm aware of, which is cited in the paper that I wrote, does not support that hypothesis.

I would also like to add that there is a point that Ronnie has been making that simply is not correct. She observes a relationship between certain compensable factors and wages, and then she concludes that it is those compensable factors that the State of New York is valuing.

In fact, all she is finding is a correlation between certain compensable factors and wages. And you can take different compensable factors and get essentially the same correlation. You can take different compensable factors, different combinations of compensable factors, and find in one combination that responsibility, for example, might have a very strong positive weight. In another combination, it might have no weight or possibly even a negative weight. There is confusion in going from observing a relationship between wages and compensable factors to saying that is what organizations value.

COMMISSIONER DESTRO. Well, I guess that was my point about asking what is "worth."

DR. NORTHRUP. Well, there is another point here, if you wanted to take two of them, and that is I would disagree, from practical experience, very heavily that supervision is supervision is supervision. I think that's simply nonsense. Certainly, I don't agree that it's—take male jobs, jobs that are traditionally male. I don't think supervising common laborers is the same thing as supervising a first rate electrical craftsman, and I think it's even less than supervising scientific people in, say, a research laboratory.

CHAIRMAN PENDLETON. Or college professors?

DR. NORTHRUP. I beg your pardon?

CHAIRMAN PENDLETON. Or college professors?

DR. NORTHRUP. Well, that's an impossible job because to supervise college professors—I can say as an ex-department chairman, and that's why I'm ex—you have all the responsibility and no authority. You know, it's sort of like being Chairman of the U.S. Commission on Civil Rights.

[Laughter.]

CHAIRMAN PENDLETON. I couldn't agree more. Last among equals.

Commissioner Ramirez.

COMMISSIONER RAMIREZ. I wish we could spend 2 days with all four of you, because I think that—

DR. NORTHRUP. My pleasure.

COMMISSIONER RAMIREZ. —the practical experience that you have obviously had would be very helpful to us.

I'm going to try to be very practical, or at least what seems practical to me, and ask, Dr. Bellak, you have done, as I understand it, you have done job evaluations—the job evaluation work with a lot of companies. And all of those have been voluntary. Have any of those proceeded from a scenario in which a company has or a personnel officer came to you and said, "I suspect that the women in my company, that their jobs have been—or that there is a possibility that there may be discrimination against women in my company, and I would like to have job evaluations to correct that"? Has that happened?

DR. BELLAK. Recently, it's quite common.

COMMISSIONER RAMIREZ. And when that does happen to you, what is the extent of the problem that you have uncovered? Can you tell us? Is it severe? Does it account for—can you elaborate on mostly how much of a problem it is from a practical sense as you look at companies?

DR. BELLAK. I can tell you that if you use the technique that Willis used in the State of Washington or that Hay used in San Jose, and if you—you probably know that Willis used to work for Hay, and he has his own modification of our process—if you applied that process anytime in the last 30 years that we have had the process to a large organization, I think you would have found 30 years ago, today, and tomorrow that if you accept the compensable values reflected in the Hay guide chart profile method, and if you apply that method with professionalism and participation of the various representatives from the organization, that you will find that at the nonexempt levels in the factory and clerical kinds of jobs, that on the average women are paid less for the same points than men, if the job is dominated by one or the other.

Now, does that prove that there is discrimination? Judge Tanner in the State of Washington says yes. All I can say is that there is a differential being paid. Now, is it because of discrimination?—which is possible, of course. Or is it because the people are drawn from different markets? The organization pays typists and secretaries and whatever in a market that's full of typists and secretaries, and it pays gardeners and electricians and whatever in a

market that's full of gardeners and electricians, and that the markets are different.

COMMISSIONER RAMIREZ. Well—

DR. BELLAK. Now, if you come—just one more statement.

COMMISSIONER RAMIREZ. I was just going to ask you what you thought.

DR. BELLAK. It becomes inflammatory, you see, if you're talking about jobs predominantly filled with women versus men. But I tell you that if you asked us the same question about accountants and engineers, we would give you the same result, that on average if we did go through the same process, same guide charts, same everything, that on the average you would find at the moment, and at the moment is important, that engineering points are worth more in the market than accounting points.

Ten years ago or whenever, before the OPEC bubble burst, geologists, geophysicists, and so forth, petroleum engineers, were like the rarest sapphires in terms of dollars per point. Today, tell me how many dozen you want and give me a dollar and I'll get them for you. You see, the market changed.

Now, is that discrimination or is it simply the company or the State—and the States have done this forever, by the way, before comparable worth, simply buying, if that's not too offensive, buying talent at the price at which it's available in the market in which it finds itself. And it pays what it has to pay.

COMMISSIONER RAMIREZ. When you look across companies or across projects, do you have an opinion about whether, indeed, when you look at the relative position of women across companies, whether, in fact, what is operating is simply the market pull or whether, in fact, within the value system of the companies, given the people who make decisions, that everything else that we have talked about, whether, in fact, sex bias is operating, or whether you believe that is just a matter of the market?

DR. BELLAK. You asked me what I believe. I am willing to believe that there is some amount of pay discrimination in the market. If you asked me to prove it, I'd tell you I can't, and I frankly don't think the economists this morning can either.

I think they can prove a differential, and they, it seems, as best I understood them, conclude that all the variance that they cannot explain must, therefore, be the result of discrimination.

To my eye, what they end up with is unexplained variance. They don't know what it's attributable to, and neither do I.

COMMISSIONER RAMIREZ. Well, I—

DR. BELLAK. Let me just support your case for the moment. If you think back on the history of how people were paid, there were many practices that look curious from today's perspective. For example, it was not that long ago that older workers were generally paid more than younger workers.

When I first started with Hay—this was in the late fifties—that was about the end of the period where it was common to find a subordinate paid more than his boss because the subordinate was older. We found married men being paid more than single men because they needed more. And why on earth would you pay women very much? They were a fringe element in the labor market. That was the way it used to be.

Now, I'm a psychologist by training. It has occurred to me that some of that kind of thinking is still buried in the psyche of the administrators of organizations. And there must be some number of men out there who feel deep down that it's women's work and it's not worth much.

To measure it and prove it is something else again. So, if you're asking for my personal belief, I think people are people and they act from some prejudices that they have. As a technologist, I tell you all I can find is a differential. I personally can't prove why it's there. I think it's the labor market. I can't prove it. I can demonstrate that the labor markets are different. I can't prove that every ounce of that difference is pure capitalistic buying and selling in a free market.

COMMISSIONER RAMIREZ. Well, I was struck by the fact that you gentlemen in your opening comments did speak—did acknowledge that, in fact, discrimination is operating. I thought that it was interesting, if you will—well, most of my colleagues have left, but when the Chairman asked that discrimination be defined, the technicians shied away from describing it, but most of the women in the audience seemed to be quite able to describe, demonstrate it at least in their face that they had some idea about what it was like.

I'm not going to be cute in this. I honestly believe that you may shed some light on how we solve that problem. I wonder, and I would ask each of you, if you can share with us, if you are concerned about the bureaucracy and the dangers of the extremes of what a comparable worth remedy might look like,

and given again your—if I can use it here—gut level sense about how the thing operates, the interaction between market and the baggage of previous conceptions about women, then how do we go about making the changes?

DR. NORTHRUP. May I make a suggestion? You keep agitating, but don't pass any laws. Actually, I'm not fooling.

DR. BELLAK. No, that's a serious statement.

DR. NORTHRUP. It is. I'm very serious about this. When I was in industry in the fifties, for example, there were many union contracts, not the one of my own company, but many union contracts that lasted up to and even after the Equal Pay Act. The union contracts had different rates for men and women spelled out, men's jobs and women's jobs, and we have come a long way. It doesn't mean we're there.

I think my quarrel with comparable worth is a firm belief that, first of all, it's too vague to be meaningful. None of us have the same definition of it today. And second, that its side effects will be rather seriously detrimental to the economy and the country.

A third, of course, is back to my own statement that there is no such thing as a fair wage. When you say something is worth more than something else, that is just a value judgment. That is all it is.

So that if you keep the pressure on, you're getting change. And you are getting change. You look at the rates for secretaries today as against just a few years ago, you are getting change.

Now, you might say that change doesn't come fast enough to suit you and, again, that's an opinion that certainly one could be sympathetic with. But I repeat, if it comes too fast, neither the men nor the women will have jobs.

COMMISSIONER RAMIREZ. Let me just make one further comment. I think that agitation certainly has its place, and I have certainly done a little bit in my time. But I think that agitation, in order to be constructive, has to proceed from a willingness to understand the nature of the problem.

DR. NORTHRUP. Right.

COMMISSIONER RAMIREZ. And not to dismiss the nature of the problem.

Let me just finally ask one question. I'll ask it of Mr. Bellak again because I find it easy to talk to him.

DR. NORTHRUP. It's the whiskers.

COMMISSIONER RAMIREZ. When these evaluation systems are implemented, when you go in and you work with the committee, and as Dr. Schwab said, it is a matter of values, what is the representation of women in these committees who hold the power to set the values?

DR. BELLAK. We would offer to any client, as a standard practice, that when you have a committee doing evaluations, the committee should be reasonably representative of the population.

Now, I don't mean exact demographic representation. Before there was such an issue as comparable worth, we would say let's make sure we have somebody from manufacturing, somebody from engineering, somebody from accounting, so that each job gets looked at from the perspective of the entire organization.

Now, we have learned to say let's make sure we have, as in San Jose, it's a union-management issue, let's get union and management at the table. We have lots of female employees; let's get females at the table. If you have a lot of blacks, let's put blacks at the table.

COMMISSIONER RAMIREZ. I hope in San Jose you have a lot of Hispanics.

DR. BELLAK. I don't know exactly what the mix was, but I know that they worked very hard to be representative.

Now, again, it's not democracy in the usual sense of an exact representation. What you need is the perspective of the organization represented by several aspects of the organization. And whether it's sex or ethnic background or function or whatever, just that there must be enough variety so that nobody at the table can run off with the game.

The other requirement is that the people at the table represent the organization, not their own group, so that the women at the table don't speak for women; they speak for San Jose, or, you know, the XYZ Corporation. That's very important.

And they must agree to agree, that whatever the process is, they have committed to it. And as long as the process doesn't turn out to be stupid, it will work.

COMMISSIONER BUNZEL. So, you never have people on that committee who don't agree with the initial process, that is, people who feel that this is an intrusion into the free market?

I remember in San Jose there were one or two members of the city council who objected to this because, from their point of view, there was a serious issue of values having to do with the freedom, but I would assume from what you are

saying that people who took that position would not be on the committee.

DR. BELLAK. Dr. Bunzel, I would be willing to put anybody on the committee who agreed to play the game fairly, even if he did not necessarily agree that it was a good idea. And we have done that in the private sector.

COMMISSIONER BUNZEL. I know you have done it in the private sector.

DR. BELLAK. The scientists don't like job evaluation. They think that they are a different kind of cat, and that traditional job evaluation is not appropriate for their kind of work. I worked on committees of scientists. The company said, "We're going to do this and you're going to represent the research labs." And they sit there and they play the game and do as well as anybody else. All they have to do is agree to play the game fairly by the rules.

COMMISSIONER BUNZEL. Yes.

DR. BELLAK. And they can later argue that they don't like the pay rates or something, but that will be a very separate argument.

Now, if you don't want to play the game, you can screw it up to a fair-thee-well. I mean, really, digging your heels in and arguing that every woman's job must have a maximum amount of this, that, or the next thing, or in one company if any job associated with manufacturing had to be of critical importance. When you get that sort of nonsense, the whole thing falls apart because, as I keep saying, given at least a process, it has to be diverse people agreeing to work it through and not getting up until they are reasonably satisfied.

DR. NORTHRUP. If they don't, I might say, and then you get to the labor relations angle, you're in a jungle. You're in an absolute jungle. I have been in those things. It's—

COMMISSIONER RAMIREZ. I just want—

DR. BELLAK. We would—incidentally, we would only work with labor, a union and management, under the conditions set up in advance. You will play the game, yes or no. And if you say you will and you don't, we leave. I assure you, we would say, "Look, folks, it ain't working," and out we go. Why sit there?

COMMISSIONER BUNZEL. Well, to play the game—I don't want to press this, because Commissioner Ramirez has her own points here, but in order to play the game there has to be a consensus. But, now, there may be people on that committee who play the game because implicitly they accept the premises of the game and that if somebody didn't accept the whole method of awarding points and all the rest, they wouldn't play the game.

DR. BELLAK. They would have to withdraw, yes.

COMMISSIONER BUNZEL. So you wouldn't have people who did not believe in the game playing the game—

DR. BELLAK. If it were that—

COMMISSIONER BUNZEL. --which is another way of saying—

DR. BELLAK. If it were that fundamental—

COMMISSIONER BUNZEL. Yes.

DR. BELLAK. —the person obviously, you know, how much can we adjust ourselves? But, again, in the private sector, we would routinely have engineers or lawyers and—

COMMISSIONER BUNZEL. Oh, yes, I understand that.

DR. BELLAK. —who really don't think it's really too smart, but if the company wants it, will give it a shot. And oddly enough, they find out it is not a bad game at all. There is rational process, you know; it's open, it's reasonable, there are scales, and it works out pretty well.

COMMISSIONER BUNZEL. Yes. It's just like the Civil Rights Commission.

COMMISSIONER RAMIREZ. Let me clarify one point, and that's—because I don't want to conclude something that I shouldn't conclude, and this is directed again at the three gentlemen who had concerns about comparable worth law.

We have talked about a job evaluation system and its promise and limitations. You have said you have great concerns about comparable worth laws and government implementation. But am I right in assuming that you do not object to comparable worth objectives, that is, that people be evaluated fairly and treated fairly in the process, so long as that is a voluntary process in which the best of all of the players can be brought to bear to achieve the outcome?

DR. SCHWAB. The question isn't whether people would—I mean, who would say that they stand for unfair payment? That's not the issue. Some advocates of comparable worth have tried to capture the term pay equity as though they discovered it themselves. Everybody is for equity. The question is equity in what sense. The concerns, and I can only speak for myself, obviously, the concerns that I have about the particular way in which comparable

worth seems to be heading is to define worth in terms of these internal factors.

We know, or at least we suspect, that the relationship between external wages and productivity is not one to one. Most people define discrimination—our economists, at least, define it in terms of people being paid unequally if they are equally productive. And we know the market has some problems of that sort.

We know nothing of the relationship between these internal factors and productivity, and I think, given the significance of the changes that are being proposed, that we ought to be looking at that question and others before we can move forward.

DR. NORTHRUP. But you asked a different question. As I understood your question, ma'am, didn't you really say that would we object, any one of us, if, let's say, a company and a union or a company alone put into effect what they called a comparable worth system? My answer is of course not.

I would say no, because if they had done a foolish thing, the market will punish them—and I'm serious about that—in one of two ways. If they set the wages too low or some crazy way, they will have trouble getting labor. If the relationships internally aren't right, they'll have a lot of labor trouble. If they set it too high, they are going to be high cost and they are going to get in trouble in the competitive market.

So what they do is to me entirely their business, and our system will take care of it. That's quite different than saying you, by law, should set this system in. That's quite different.

COMMISSIONER DESTRO. Commissioner Ramirez, could I break in for one moment?

COMMISSIONER RAMIREZ. Yes.

COMMISSIONER DESTRO. The Chairman has asked me to take the chair in his absence, and we're getting on to 5:30, and I know we have lost our air-conditioning here. So among other things, do you have anything else particularly you want to raise? If so, we'll go ahead.

DR. BELLAK. Do you mind if I also answer Commissioner Ramirez' question? She asked a rather—

COMMISSIONER DESTRO. Well, I don't want to cut off anything. If you want to continue, fine, Dr. Bellak.

DR. BELLAK. I think that she asked a very good question, and I will tell you that I came here to put something into the debate, which I haven't seen elsewhere, to address some of these issues from the perspective of the technologists. I'll tell you that we have just been employed by two States with comparable worth laws to help them install a comparable worth program.

I think this goes back to Dr. Northrup's response that if that's what they want and if we can offer the technological devices and process that help them do the job evaluations, and if we or they collect labor market data and choose a single position for all people, male, female, or whatever, then so be it. If that's a good idea for them, fine. If it turns out to be not a good idea, well, it's their idea. That's the way they wanted to administer compensation in their organization. And whatever happens will derive from their decision.

The technology for doing these things, if they accept certain principles in our case, is in existence, and it's been proven.

COMMISSIONER DESTRO. Thank you. Do you want to continue?

COMMISSIONER RAMIREZ. Well, I'd love to continue. But let me just ask one quick one. You talked about values and you talked about market preference and you talked about making things work. It seems to me that the reason that we're talking about comparable worth is that, indeed, there are changing values, and those have to do with the way women see themselves in the labor market and in the economic mainstream. So that, then, becomes one of the factors in decisionmaking by all sorts of employers about how they will play in this game.

So that when you talk about organizations choosing or because of internal factors as well as external factors, including the law, choosing to go forward to try to achieve some standard of comparable worth, you have made a judgment, or is it your judgment that under those circumstances, when values and value changes cause organizations to confront this problem, that you are indeed not talking about an aberration of the economic—you're not talking about an aberration in terms of the economic well-being of the country or the economic function of the country, but an evolution in the economic function of the country?

Is that too difficult?

DR. BELLAK. If that's all directed at me, I would—

COMMISSIONER RAMIREZ. We can talk about it afterwards.

DR. BELLAK. No, I would rather, as I said earlier, stay away from such things as the economic desirability or feasibility. I'll leave that to others.

COMMISSIONER DESTRO. All right. With that, I think that we'd best call it to a close.

The meeting is now adjourned. We will reconvene in the same room tomorrow morning at 9 o'clock.

I'd like to thank the panel on behalf of the Commission. I know members have left, but thank you very much.

Consultation on Comparable Worth

Proceedings, June 7, 1984

CHAIRMAN PENDLETON. This is the witching hour and we should begin.

Let me make a couple of announcements in the beginning, at least, one announcement. If there are any hearing-impaired persons in the audience, we do have an interpreter, and if you raise your hand, we'll try to put you in view. If there are none, then we haven't got to deal with that. If anybody knows anyone that comes in that might have that problem, let us know and we can give them some assistance. Thank you.

This is the second day of this Commission's consultation on the issue of comparable worth. I might indicate that these proceedings will be bound and made available for distribution at some point in the future. We're not committed to the time as to putting the transcript together, but it will be available at a later date.

Today we have two panels and an overview, one panel this morning and one this afternoon. The first presentation this morning will be an overview of comparable worth conditions from 1974 to the present at the Federal, State, and local levels. Nina Rothchild, Commissioner of Employee Relations for the State of Minnesota, will be the morning presentor. What we're going to do is ask her to give us an overview in about 20 minutes of the paper she submitted and give us a chance to ask some questions. Ms. Rothchild?

FACTUAL OVERVIEW: CURRENT COMPARABLE WORTH PROPOSALS AT THE FEDERAL, STATE, AND LOCAL LEVELS

Statement of Nina Rothchild, Commissioner of Employee Relations, State of Minnesota

MS. ROTHCHILD. Mr. Chairman, members of the Commission, thank you very much for inviting me here. I would also like to thank your staff for their help in making the arrangements for the consultation.

Yesterday's discussion could be characterized as somewhat theoretical and hypothetical. Today I'd like to be more concrete and discuss specifically what is happening around the country. What I'd like to cover this morning is, first, a general description of the kinds of initiatives that have been undertaken in various State and local governments; second, a review of the chronology that I have presented in my paper; third, a brief discussion of our experience with pay equity in Minnesota; and fourth, some general conclusions from the 10 years of experience we have had with this issue. Before I do that, I'd like to give what we mean as "comparable worth."

We use the expression "comparable worth" interchangeably with "pay equity." I know some people make a distinction, but in Minnesota we do not. What they both mean is equal pay for work of equal value. However you define the value, you're moving beyond the concept of jobs that are identical to jobs that have equal value to the employer. We perceive it as a method to remove sex or race as a factor in wage setting.

Now, if you find disparities in wages between groups of people, there are basically three ways that you could try to eliminate those disparities. One is through the collective-bargaining process, another is through litigation, and a third is through governmental action. My paper does not cover either collective bargaining or litigation to any great extent. These initiatives are difficult to get a handle on because negotiated increases often are not called comparable worth. Such raises simply mean the union is doing its job in getting higher wages for its members. On the other hand, AFSCME has about 80 cases filed with the EEOC, and there are some other collective-bargaining initiatives which could be labeled pay equity, such as negotiated job

evaluation studies. But most of the time it's very difficult to get a satisfactory listing of what has been achieved through collective bargaining.

As for litigation, because you have a panel of attorneys who will be presenting that later this morning, I will leave that to the experts. My focus will, therefore, be on various initiatives that have taken place at the State, local, and Federal level.

Most activities, to date, have occurred in the public sector. It is difficult to determine what is happening in the private sector. Asking around, people seem to give two answers: one is that they already pay on the basis of comparable worth; the other is that they consider it too revolutionary, complex, and disruptive. In response, the response of the private sector is either that there is no problem or that it is too much of a problem.

Even when you narrow it down to government initiatives in the public sector, there is still a variety of activities taking place. There are many small jurisdictions, and I will use one as an example of why it is difficult to get a complete picture of everything that is going on.

Recently, I gave a speech to a women's club in a small town about 100 miles north of the Twin Cities. I was talking about the Minnesota State experience with pay equity. After the meeting was over, a woman came up and told me she was the mayor of a small town out there on the prairie with a population of 3,500. She explained that she had, in fact, adopted a pay equity plan for the city employees in Princeton, Minnesota. She and the city administrator had sat down and developed a job evaluation system which everybody thought was fair, and they had given increases to lower paid female clerical workers. I doubt if this woman had ever heard of *Gunther* or that she was aware of what was going on nationally. Princeton, Minnesota, won't show up in any national listing of pay equity, but it is an example of independent initiatives occurring in all kinds of places.

Despite the difficulty in identifying all these activities, I think you can identify four general types of pay equity initiatives that have occurred over the last 10 years. The first would be enforcement of existing laws. Washington State is a good example of using Federal law. Title VII of the Civil Rights Act was used as the basis for eliminating the wage gap between men and women. When it comes to having a comparable worth standard or administrative enforcement in State law, there are 17 States which fit into this category.

Secondly, and by far the most common, is to do studies. Studies can be fairly general, such as documenting the overall wage differential between male-dominated jobs and female-dominated job classes. They can be highly sophisticated and comprehensive by using job evaluation systems and statistical techniques to document the part of the wage gap that can't be accounted for by other factors. There are now 25 States that are conducting or have conducted pay equity studies.

A third type of initiative would be adopting a comparable worth policy for civil service employees in the State government. There are eight States now that have pay equity standards in their civil service statutes. The first was Wisconsin, and the second was California. Minnesota's law essentially was copied from California.

The fourth kind of initiative would be implementation. That is, moving beyond using existing laws or making studies or making policy statements to actually doing something to close the wage gap between people who work in female-dominated occupations and male-dominated occupations.

I'd like to turn now to a brief review of the chronology. Since you have a copy of my paper, I will not go through it year by year. Although it is not comprehensive, I think it gives some sense of the variety of initiatives taken. They range from what is estimated to be a $300 million lawsuit in Washington State to the case of Princeton, Minnesota. It ranges from classic studies using job evaluation systems to establishing a policy and process for implementation. It includes more recent initiatives like Madison, Wisconsin, which has a pay equity contract compliance requirement, to the State of Michigan, which has a law prohibiting wage secrecy. So I hope the chronology gives a sense of the variety of initiatives that have taken place across the country.

Secondly, I hope it gives a sense of the accelerating pace by which States and local jurisdictions are looking at this issue. It started in 1974, although I think the concept has been around for a long time. But the more focused attention to it can be dated from the 1974 study in Washington State. The next major action was in 1976 when Idaho adopted a job evaluation system and used that as a basis for setting wages in 1977. Wisconsin had the first policy statement for civil service. So, although there were some initiatives during the late 1970s, the pace really

picked up in 1981 with the *Gunther* decision of the Supreme Court.

At the present time, there are 25 States that are conducting studies, 17 States have a standard in their law, 8 States have policy statements, and 5 States that have implemented. This is not even talking about the local jurisdictions which have had some kind of activity. So, I hope the chronology will give you a sense, first, of the variety of initiatives that have taken place and, secondly, of the accelerated pace of change that is occurring in all parts of the country.

I would like to turn now to Minnesota's experience. I wrote a summary in the paper, so I will not review all the specifics. The types of activities that took place in Minnesota, I think, are fairly typical of what is going on in other States, although we're not typical in the speed with which we did it. I think the comparison of Minnesota with Washington State is useful: the two States are similar in size, and I'm sure they're alike demographically. Washington State did their first study in 1974. By 1981 they had made no move to implement and they were in court. At the current time, it looks as though it could cost them $300 million in back wages to implement.

Minnesota did a study in 1979, made a pay equity analysis in 1981, and in 1982 passed a law to establish a policy and a process for pay equity. In 1983 the legislature appropriated $21.8 million to make equity adjustments. That seems to me to be a fairly straightforward and reasonable way to go about addressing this issue.

As I said, we have in Minnesota law both a policy and a process. It's fairly simple. What we're dealing with is the structure which takes care of 80, 90, 95 percent of everyday people who work for the State of Minnesota. It has worked very well. We did not have any opposition when the law was passed and the appropriation was made. So I think its very simplicity has certainly been part of the success.

A more recent initiative in Minnesota was a bill which passed this last winter and which mandates pay equity for all local units of government. That includes counties, school districts, and cities. I think the law went through with very little opposition because of our positive experience with pay equity for State employees.

I would like to conclude my remarks simply by presenting some general conclusions from our experience in Minnesota and from the experience of other States. One is, if you look around the country, the patterns are remarkably consistent. The amount of job segregation and the wage gap between men and women are the same everywhere. Existing job evaluations show similar patterns of an average 20 percent differential in pay between male-dominated jobs and female-dominated jobs. Studies in all States have shown similar results.

I think the second conclusion is that the cost of pay equity is also relatively consistent. We found in Minnesota that the cost of equalizing wages (on the basis of our job evaluation system) was about 4 percent of the State payroll. I believe somebody said yesterday that Washington State was 5 percent. Actually, in the city of Princeton, Minnesota, it was one-tenth of 1 percent of payroll. As a portion of the payroll, the cost of closing the gap is not so great.

Third, there is really not a conflict between pay equity and legitimate questions of labor shortage. In the Minnesota law, we allow for other considerations. We simply say that pay equity will be the primary consideration. If we have an instance where we can't get doctors for our State hospitals, for example, we pay them more than what fits into the job evaluation system. We recognize that doctors are going to be exceptions to a general pay standard, and we make allowances for that.

Fourth, I think that in comparing Washington State and Minnesota, efforts that are undertaken voluntarily and in good faith are less costly, more controllable, and more conducive to good employee relations.

The fifth point I would like to make is that a job evaluation system need not be perfect in order to be useful. If you wait for anything to be perfect, you will have a very long wait in this world. A job evaluation system, as someone said yesterday, is clearly a reflection of someone's values. But so are the dollars that we pay. In a sense, we have an evaluation system in every workplace because someone had to determine what would be paid for each job.

In sum, I think if you focus on the heart of the matter, which is you want to eliminate sex and race as a factor in the wage system, if you focus on structure rather than on exception and if you use commonsense and goodwill, pay equity is something that can be addressed in a positive and straightforward manner.

In looking at my watch, I have hit the 20-minute mark. So, Mr. Chairman, I will conclude and be happy to answer questions. Thank you.

CHAIRMAN PENDLETON. Thank you for that fine summation. I'll now turn to my colleagues and see if there are questions.

VICE CHAIRMAN ABRAM. Ms. Rothchild, I find your comprehensive view of experience very interesting. I noted in your final remarks you dealt with a system there adopted and as being focused directly to the elimination of discrimination in wages that is implicit in so many cases or found in so many cases, discrimination based on invidious grounds. Is that right?

MS. ROTHCHILD. Well, Mr. Abram, I used the word disparity, not discrimination. There is a disparity, and that's what we're dealing with.

VICE CHAIRMAN ABRAM. All right. I would like to ask if you found that there was vast disparity in the wage scales of your State as applied to various job categories in which there were no segregated numbers, numbers in females, blacks, and Hispanics, or whether you would argue, as you have today, for a system of comparable worth based upon the value of the job to the employer?

MS. ROTHCHILD. I think good personnel management would dictate that an employer would want to pay according to the value of the job. Living in the real world, it is more of a long-range goal than something that will happen tomorrow.

VICE CHAIRMAN ABRAM. Well, I think what you're saying is what I suspected; namely, first of all, if you have your view of the way equity and justice should be achieved in the market for labor as being this system of rating and pointing, it is of universal applicability and not just applicable to the cases of discrimination based on invidious classification such as race. It is a goal and desire and end result; is it not?

MS. ROTHCHILD. That is true.

VICE CHAIRMAN ABRAM. Therefore, persons who are as learned as you are foresee the use of the claim of discrimination—and there is discrimination; I'm not disputing that—as an entering wedge for a total revision of the system by which governments set wages and salaries.

MS. ROTHCHILD. I think that's likely to happen. It's an imperfect world and I think you have many factors. What we've tried to do in Minnesota is to focus on the most obvious kind of disparities between men and women or between blacks and whites, the kind that would constitute discrimination under the law. We're not trying to solve all the world's problems.

VICE CHAIRMAN ABRAM. At this time.

MS. ROTHCHILD. And I'm not holding my breath, either.

VICE CHAIRMAN ABRAM. Let me go a little further. I know it is a gorgeous State. You have a great many State vehicles, and you have a lot of people engaged in putting gas in those vehicles. I would suspect, though I don't know, that they are very low paid as compared to your secretaries, and that is a reflection of the market conditions; that is, you can get males to put gas in automobiles for considerably less wages than you can get secretaries who work as secretaries. I would suggest to you that each is valuable to the State and without each, the State could not operate. Now, would you advocate that those males who put gasoline in trucks and vehicles and the cars, would you advocate that in all cases, based upon their work, that they should be paid as much as females who hold jobs that are equally valuable but pay more?

MS. ROTHCHILD. Mr. Abram, we found in our study that there was not a single case of a male-dominated job class that paid less than a female class of comparable value. There was simply not a single instance of what you just described.

VICE CHAIRMAN ABRAM. I'll deal with it in both ways. Suppose you found that, would you advocate what I suggested? Would you advocate that the male wages be raised to the wages of the most advanced secretary?

MS. ROTHCHILD. Well, Mr. Chairman, that is too hypothetical and unlikely to ever happen.

VICE CHAIRMAN ABRAM. Well, suppose it did happen?

MS. ROTHCHILD. I think if there is similar value, I would try to pay the same.

VICE CHAIRMAN ABRAM. And you wouldn't trust the market to eventually take care of the males who service automobiles and trucks?

MS. ROTHCHILD. Mr. Abram, when I think about the market, I make a strong distinction between prevailing wages and supply and demand. Maybe 10 percent of the jobs are affected by supply and demand. So when you say "market," it is hard for me to say—

VICE CHAIRMAN ABRAM. Well, I meant the other final question, ma'am. You say you did a survey and never found a male-dominated classification or job that was underpaid in relation to female jobs. Is that right?

Ms. ROTHCHILD. According to the Hay evaluation system.

VICE CHAIRMAN ABRAM. Can I ask you whether or not you specifically looked at those who serve trucks and automobiles?

Ms. ROTHCHILD. Yes. We looked at every single job.

VICE CHAIRMAN ABRAM. Do you recall that one?

Ms. ROTHCHILD. I don't recall any particular one. But, as I say, we had computer printouts which compared female-dominated classes with equivalent male classes, and there was simply not a single instance in 1,800 job classes where that was the case. I'm not saying it couldn't be the case with other employers, but my experience was such that it was not the case.

VICE CHAIRMAN ABRAM. Thank you.

CHAIRMAN PENDLETON. Commissioner Ramirez?

COMMISSIONER RAMIREZ. Thank you very much. When you use the classification—the criteria by which you evaluate jobs was not some abstract notion of value to the State. What were the criteria that you used in the Hay evaluation system?

Ms. ROTHCHILD. The Hay system is very explicit in identifying factors and subfactors. It was developed for the private sector. When the State of Minnesota adopted that system, we did not alter it to fit us as employers. We simply had a contract with the Hay Associates. They trained our employees to do the evaluations. We simply adopted an existing management tool for evaluating job classes.

COMMISSIONER RAMIREZ. Know-how and accountability are the factors in assessing the value and into that would go such things as formal on-the-job training, all of those things?

Ms. ROTHCHILD. When we're talking about job evaluation, we're talking about the functions of a job. We have class specifications. It has nothing to do with an individual incumbent, how they perform, what kind of education they have. When you look at the class specifications, you match the level in those specifications to the guide chart, whether there is a lot of decisionmaking or little decisionmaking. You get so many points according to the chart.

COMMISSIONER RAMIREZ. So that the hypothetical value of the secretary and the value of a man pumping gas would be more than the notion of which makes the Minnesota government run. There is more specificity to the evaluation than simply which is more valuable, or what is more critical.

Ms. ROTHCHILD. That is right. It was not a system we developed ourselves. Unlike what they're doing in New York State, or what they are doing at the University of Minnesota, the Minnesota personnel department simply adopted, if you will, the value system that was developed by the Hay Associates.

COMMISSIONER RAMIREZ. And the Hay evaluation system has been existent for about 30 years in the private sector?

Ms. ROTHCHILD. Yes. And it has been used extensively in the public sector, too.

COMMISSIONER RAMIREZ. Thank you.

CHAIRMAN PENDLETON. Commissioner Destro?

COMMISSIONER DESTRO. Thank you for your presentation, Ms. Rothchild. I'd like to ask a couple of questions related to your system. Now that you have this system in its implementation phase, what do you expect will be the percentage wage gap after it is fully in place?

Ms. ROTHCHILD. The percentage wage gap will be zero on the basis of the Hay evaluation system. However, the overall average of all females and males might still have a gap because we have in our salary schedule factors relating to seniority and so forth. Our plan at this point is to implement over a 4-year period—as I say, the total cost is 4 percent of payroll. We're doing 1 percent of payroll per year and assume that the legislature in 1985 will appropriate a similar amount of money as in 1983. We fund contracts on a 2-year basis.

COMMISSIONER DESTRO. Sure. One of the reasons I asked that question is that throughout most of the papers we have been reading and presentations we have been hearing, we have been hearing about an aggregate wage gap, and that is where you get the 60 cents or 58 cents. You get it as a factor of percentage. Have there been any projections made by your department as to what the Minnesota aggregate wage gap would be?

Ms. ROTHCHILD. First of all, the wage gap in the public sector tends to be less than in the private sector. I believe the wage gap we started with was 75 cents on the dollar. I haven't really projected what an overall would be. My guess is that it wouldn't be much because it is a civil service system. People tend to come into this system and stay for a lifetime, women as well as men. So my guess is that the factors you might find in the private sector are not as common in a public jurisdiction.

COMMISSIONER DESTRO. Has there been any market disparity in the wages that you have now set

by way of the system with what the market might otherwise expect in a large city like Minneapolis or in a small town like Princeton?

Ms. ROTHCHILD. I should state that even before we started our pay equity program, our office and clerical workers were paid 15 percent above the prevailing wages. They now will be paid more than that. They are receiving about a 20 percent increase over a 4-year period. My guess is that it will have some impact on general wages, at least wages for the kind of jobs women and minorities usually hold.

COMMISSIONER DESTRO. One of the systems that you recounted in your timeline was the capital city of my former State, Madison. You indicate in your paper that vendors have to set percentage goals for hiring of women, minorities, and disabled people. You go on to say that the same goals must be used for distribution of salary to these groups. Would you explain what that means?

Ms. ROTHCHILD. My understanding is that if someone who contracts with the city has, let's say, 10 percent women [illegible] payroll and 5 percent minorities on their payroll, then of their total payroll dollars, women should get 10 percent and minorities should get 5 percent. It is fairly recent, and I don't know how it operates in practice.

COMMISSIONER DESTRO. Thank you.

CHAIRMAN PENDLETON. Commissioner Berry?

COMMISSIONER BERRY. Ms. Rothchild, I was very interested not only in your paper and presentation, but in your answers to the line of questions to Mr. Abram, which confused me somewhat. So I would like to pursue it. As I understand the basis for what is called the comparable worth claim, which is a popular term in complaints before EEOC and litigation that has gone on, it's all based on Title VII. There are also claims made based on Executive Order 11246, and they are categorized by those who bring them as sex-based wage discrimination complaints, with the argument that—

CHAIRMAN PENDLETON. Can everyone hear in the back?

COMMISSIONER BERRY. I'll start off again. Ms. Rothchild, I said that I was very interested in the line of questioning of Mr. Abram and your responses, so that I want to pursue it a little bit. As I understand it, the complaints filed by people who make complaints about comparable worth before the EEOC and in litigation, they are talking about sex-based wage discrimination, usually under Title VII and sometimes they argue under Executive Order 11246, and that they are always talking about the fact that Title VII prohibits denial of—disparity or discrimination based on sex, and that if you can prove that the only reason why you get paid the wage is because of your sex, whatever, the value of the job and all that is something you prove, that you might pursue this and you might win. The understanding also is that the basis of Title VII is that women and minorities are acknowledged as having been discriminated against in the past, and that is why they are picked out as targets in the statute. That was always my understanding.

I understand from you, though, that Minnesota has gone beyond that, from your answer to Mr. Abram, that you—he asked you about gasoline pumping and certain other jobs, and the answer you gave did not seem to support the notion that you look at female-dominated jobs because of historic discrimination, but that is a factor. But you seem to be going beyond discrimination complaints—Minnesota can do whatever it wants; I'm not complaining about that. But I just want some clarification for my information. Are you talking about something beyond what everybody else is talking about?

Ms. ROTHCHILD. No. I'm afraid I didn't make myself clear. The Minnesota program is set up strictly to deal with sex-based wage discrimination. When we are appropriating money to close the wage gap, we look at male-dominated jobs, we develop a salary practice line; we see that all the female-dominated jobs are below that line, and we bring the female-dominated jobs up to that line. There are men in those female-dominated occupations. We are looking at the structure of the wage system. We define the female occupations by the gender of the incumbents.

My answer to his question was that if you could prove that male gasoline pumpers were paid less simply because they were men, then I think Title VII would apply. But we're not dealing with that, because it is too hypothetical. We're not trying to make everything fair. There are balanced classes below the practice line; there are male classes that are above and below the line. We are not dealing with that as an issue. My guess is that at the bargaining table, we may very well deal with it. But the program we have set up, the policy and the process, deals only with the sex-based part of the wage differential.

COMMISSIONER BERRY. So any inferences I drew from your response seeming to indicate that you

might be talking about issues that had nothing to do with sex-based discrimination were merely my inferences, or based on the fact that I really didn't understand. I think I do understand now.

If I could move along, you say you used Hay Associates. There was a man here yesterday who I think was from the Hay Associates. He may still be here. But when I listened to his testimony, I was almost persuaded that the evaluation process was something that was not completely reliable and that used as a basis for trying to compare these jobs, I got the inference that that was a rather specious kind of approach to take. When Hay Associates' services were contracted for by your State, did you understand that about the process? What did you think you were getting for your resources?

Ms. ROTHCHILD. Well, I was not with Employee Relations at the time they adopted—

COMMISSIONER BERRY. Okay.

Ms. ROTHCHILD. I think what they were doing, I think that what Mr. Bellak said, is that it is always subjective. I think Hay has been in the business about 30 years.

COMMISSIONER BERRY. How long?

Ms. ROTHCHILD. I think about 30 years.

CHAIRMAN PENDLETON. He said 30 years.

COMMISSIONER BERRY. Oh, he said 30 years. Could I ask you also, have you had a lot of complaints in Minnesota among various groups and workers about this process? Have you had more male workers complaining, that compare other jobs with those females, comparing apples and oranges? Do they want to be there, and so if they want to make more money, why don't they go do something else? What's happening there?

Ms. ROTHCHILD. Well, that is something that surprised me about the hypothetical case because our experience has been so positive. From every direction, newspaper editorials, the union, everybody seems to think the time has come to try to eliminate the wage gap. Specifically, State employees in Minnesota are fully unionized, in 16 different bargaining units. The largest union is AFSCME. They represent six of the bargaining units. Two of their bargaining units are heavily female, clerical workers and health care nonprofessionals. They also represent our trade and labor workers and our prison guards, both of which are heavily male dominated. The union's point of view has been that as long as there are people with low wages, it tends to depress the wages for all workers. In the same way, unions have historically supported raising the minimum wage because the wages of those low-paid people are going to draw down wages of the other fellow. So there has been generally a positive response from unions, as well as from the general public and the public officials.

COMMISSIONER BERRY. Last question. It may be something peculiar to the history of Minnesota in the fact that you're a heavily unionized State and a political climate in Minnesota that creates conditions where you can have acceptance of this kind of notion. Am I inferring correctly?

Ms. ROTHCHILD. I love Minnesota. But I can't believe that it is so different from every other State in the country.

CHAIRMAN PENDLETON. It is in this respect.

Ms. ROTHCHILD. I can account for it by some specific factors; that when we moved, we moved quickly. We worked cooperatively between the legislative branch, the executive branch, and the public. But, again, I don't believe that Minnesota is in a land of its own.

COMMISSIONER BERRY. Thank you.

CHAIRMAN PENDLETON. I do want to say, Ms. Rothchild, that Ms. Chavez has reminded me that Mr. Bellak said that the system worked fine in a voluntary way. But when you put some mandate on the system, that is where it tended to have its problems, and I think, in all deference to him, we need to say that was not a universal thing about the system, but it was a voluntary—

COMMISSIONER RAMIREZ. Let me add to that, Mr. Chairman. He also said that, in recent times as the prospect of comparable worth as a mandated activity has come to the floor, the number of requests for voluntary application of the Hay system to the issue of sex discrimination has increased.

CHAIRMAN PENDLETON. Thank you. Commissioner Buckley?

COMMISSIONER BUCKLEY. In your comparable worth study in Minnesota, can you give us an idea in your range of job classifications as to how wide a range of job classifications you're talking about? If you had to categorize where this range falls, where would you—if you went, say, from the less paying down to the most paying, where would you locate that? Then, if this range were lower, would that make any difference in implementation, do you think?

Ms. ROTHCHILD. I'm not sure I understand the question. We define as a "female" class any job class

which is over 70 percent female. Some of those classes were closer to the male line and some were farther away. The average gap, if you will, between the salary practice line for female-dominated occupations and the salary practice line for male-dominated occupations was about 20 percent.

COMMISSIONER BUCKLEY. What I'm trying to get a line on is if you look at all of the job titles, where would these job titles fall? Would they fall in—

MS. ROTHCHILD. In the evaluation system?

COMMISSIONER BUCKLEY. No, in the work unit.

MS. ROTHCHILD. In the type of occupation?

COMMISSIONER BUCKLEY. Right.

MS. ROTHCHILD. Okay, office and clerical workers, every single one of the job titles was underpaid. Health care nonprofessionals was the next group. Those are your State hospital workers. Your food service workers were next, and then your custodial workers—male and female. So they tend to be at a low end of the pay scale to begin with. In fact, when you get about halfway up on Hay points, there are no more female job classes. The job classes from then on are all male dominated. So those are the occupational groups that were most affected by this—both the lowest paid and the lowest Hay rated.

COMMISSIONER BUCKLEY. If you set up your scale in an area nearby to the city, county, or State, if somebody else set up a higher number of points for them, or if it is the same number of points but a higher wage, how would you deal to correct the fact that you might have a migration from a lot of employees over there because they could get more money? What would you do to your comparable worth scale to try to deal with the fact that you're having people leave and don't have people to fill the vacancies?

MS. ROTHCHILD. We simply don't find evidence of that kind of activity. Our largest concern in our civil service system is that our turnover has been so low. The wage structure in the public sector is different from the private sector. In the public sector, the lower paid people are paid more and higher paid people are paid less. Movement from one sector to the other seems not to occur. We do, however, have some movement between one public jurisdiction and another. As a practical matter, we find very little movement from one job to another job because of salary.

CHAIRMAN PENDLETON. Excuse me; one question. Once you get to this absolute zero point, what happens when you have salary increments and raises? Do they have raises because of individual performance or salary raises given because job classifications need to be upgraded? In other words, does everybody go up? Do all secretaries go up at the same time as truckdrivers go up, or do truckdrivers in a class begin to receive raises—merit raises, not the normal cost of living increases—but what happens? I guess what I'm trying to get at is, What do you do about individual differences within a job classification in terms of that performance? How is that rewarded, or does it mean you have to raise everybody's salary at the same time you raise one?

MS. ROTHCHILD. As I said earlier, all of your employees, except the managers and some confidential employees, are covered by a union contract. Those union contracts generally do not have merit pay in them. They generally have step raises related to seniority. I should explain that our pay equity program had to be done within the framework of collective bargaining. So the kind of process we use is different because we need to maintain the integrity of the collective-bargaining system. At the same time that we had money earmarked for equity increases, we also negotiated general wage adjustments for our 16 collective-bargaining units.

CHAIRMAN PENDLETON. It seems to me that there is a closed system in Minnesota from the unions and between government, if you will, that you have, in a sense, said to the taxpayers of Minnesota, "Here's how we're going to handle all of our public employees," and this is probably the most convenient way to do that. As a result of that, you really have a closed way of promoting the system, and that seemed to me to be a little bit unfortunate that there is no room for individual performance in this system. If the union and collective bargaining and the government all together in this whole—

MS. ROTHCHILD. Mr. Chairman, my view is that, in the public sector, there is a great deal of accountability built into the system. The legislature, after all, has to face the voters every 2 or 4 years. I would guess our success with pay equity is related to the dramatic changes in women's voting patterns. In the 1984 session, the legislators told the lobbyists that they would love to have it not come up for a vote. But there is no way that they can face the people in the State by voting against pay equity. So, I think we're reflecting the mood of the public.

CHAIRMAN PENDLETON. Well, I think you say it better than I say it. One more question. You used the

terms pay equity and comparable worth interchangeably, but you said you were not using the terms disparity and discrimination interchangeably. Could you help us out with the distinction?

Ms. ROTHCHILD. Let me give a parallel example. Our department is responsible for affirmative action, and we have 34,000 State employees. If I found that we only had five blacks, two Hispanics, and no Indians, I wouldn't sit around debating about whether that is discrimination or disparity. I would say that it is wrong and we ought to do something about it. We perceive the wage gap in the same way—we don't spend a lot of time talking about whether it is discrimination or disparity. We say it is wrong and we ought to do something about it.

CHAIRMAN PENDLETON. But you're saying—that didn't answer my question in terms of comparable worth. What you're really saying is that because of pigment or gender, that is, some kind of underrepresentation in the work force, something is wrong.

Ms. ROTHCHILD. I believe so.

CHAIRMAN PENDLETON. And that the government should correct whatever they perceive as wrong.

Ms. ROTHCHILD. Correct.

CHAIRMAN PENDLETON. But you haven't answered my question about the difference between pay equity and comparable worth.

Ms. ROTHCHILD. It's a matter of semantics, as far as I'm concerned. Maybe some people make a distinction, but we never have.

CHAIRMAN PENDLETON. Okay. Commissioner Bunzel?

COMMISSIONER BUNZEL. I want to say, first, that as someone who comes from California, I envy Minnesota. Because whatever cooperation you had in your State, it is not the prevailing climate in California on a whole range of issues.

Ms. ROTHCHILD. The cold winters: we need to pull together or we'll die together.

COMMISSIONER BUNZEL. Yes. That's the same theme you'll hear in about a month when the Democrats convene in San Francisco. I have been trying to understand the question which our Chairman just posed. I'm tempted to try again. But let me state, if I can, what the inference of your answer to his question was, which was to try and distinguish in your thinking the differences between pay equity, which I know is your term for comparable worth, and discrimination. You said, in answer to him, that when you find in your work that you have a small number of certain groups in particular occupational groups, you're not as concerned as to why, but you realize it is wrong, and it is up to the government to do something about it.

Ms. ROTHCHILD. This can't be explained by—

COMMISSIONER BUNZEL. That is what I want to get at. It seems to me that, based on what we learned from various witnesses yesterday and from our reading of literature and looking at various kinds of experiences in the private and public sector, that one can make an argument that the reason that the Swedes, for example, dominate the tugboat operators on the East Coast is not necessarily because there is discrimination against others. I could use better examples.

What I'm trying to get at is that I'm not at all certain—and I may be putting words in your mouth; if I am, please spit them out—that the question of why there are so few of these groups is unimportant, as you seem to think. Because if there is discrimination, then it seems to me that affirmative action comes into play. But you have said that affirmative action is a responsibility of your State without having to wonder whether or not there is discrimination, or to be concerned with it because it is wrong, and therefore, affirmative action, whether it is discrimination or not, you must do something about it. That is not my understanding of affirmative action. But beyond that, would you tell me a little bit about why, since you did state at the outset that sex-based occupations were the premise upon which you have worked in Minnesota for pay equity, the reasons that may or may not involve discrimination are unimportant in the short or long run? Am I looking at something that has the potential for conflict, or am I making a mountain out of a molehill?

Ms. ROTHCHILD. Well, maybe the latter. I think you're speaking in absolutes, whereas our experience has been more pragmatic. It is not that I don't care about why or anything like that. It's just that, like anything else, if you can't find any kind of rational explanation, if it flies in the face of all commonsense, statistically there would be no accounting for the fact that there were no Indians hired by the State, because there are a fair number of Indians living in the State. If it flies in the face of commonsense, it then just simply becomes something that you think you should deal with without getting into a lot of theoretical absolutes.

We operate from a very pragmatic point of view. We see disparity. We cannot account for disparity. We try to think of some way to eliminate disparity. We knew that if you paid women less than men, that could be discrimination. But we didn't make any judgment about whether it would have held up in court or not because, luckily, it was never taken to court.

COMMISSIONER BUNZEL. But I think what I'm listening to, from what you're saying, is that where there is wage disparity, there may or there may not be discrimination; but that wage disparity is the responsibility for the government to do something about.

MS. ROTHCHILD. Certainly. when the government sees—

COMMISSIONER BUNZEL. All right. Yet, if I were to give you a job classification in which there was wage disparity, but I could persuade you at the same time that it was not due to discrimination, would you still say that in that instance there has to be a remedy to rectify the wage disparity?

MS. ROTHCHILD. We have all kinds of wage disparity. We pay people more if they have management positions. I don't have trouble with the fact that some people get paid more than others. I mean, that is the way our system is set up. I think you can argue about how *much* difference there should be between low- and high-paid people. But I also think that when you have factors like sex and race embedded in your wage system, which is essentially what you're doing when you survey the market, then you have an obligation as a public employer to eliminate that.

COMMISSIONER BUNZEL. Have you found in any State jobs some that are overvalued?

MS. ROTHCHILD. We have State jobs that are paid more than their Hay points would account for.

COMMISSIONER BUNZEL. Are there State jobs that are paid more than they are worth?

MS. ROTHCHILD. Worthiness is in the eye of the beholder. We define worth according to the evaluation system that we have adopted. I'm sure that most people would agree that some jobs are worth more than other jobs. We do have some exceptions to our evaluation system. We do not use the system for faculty positions, although I think that, theoretically, you could develop a system for teaching jobs. We don't use it on the highway patrol, because those folks are in life and death situations a good deal of the time. So we make exceptions, but we don't—

COMMISSIONER BUNZEL. Well, I think that one of the things you said that was important was that a good deal of the notion of worth was in the eye of the beholder and this would be the key, union or what-have-you. I think you said to Mr. Abrasa that there were some male-dominated jobs at the local point.

MS. ROTHCHILD. Yes. It is the very definition of the salary practice line, the line of best fit if you applied the Hay point on the current salaries.

COMMISSIONER BUNZEL. So you did find some male-dominated jobs below the line. Did I state it correctly, then, that their jobs were also brought up?

MS. ROTHCHILD. No. We were simply dealing with the female-dominated occupations with the money that was set aside. That is not to preclude collective bargaining with the unions that represent male classes below the line or the unions that represent the balanced classes below the line. The very definition of your line is the line that best fits. So half of your male job classes are above the line, or below the line or on the line.

COMMISSIONER BUNZEL. The last question I have is one that could occupy us for a long time, and it may not occupy us at all, because you may already have answered it. I'm particularly interested now in all of the implications of this and whether or not the State University of Minnesota, for example, is under your jurisdiction. Since it's part of the State system, have you dealt with all of the jobs in the academic world?

MS. ROTHCHILD. No. Our office is responsible for two higher education systems—the State university system and the community college system. The charter of the University of Minnesota predates our State constitution, and the university is, therefore, autonomous. However, there was a law already on the books that requires university civil service employees to be paid comparably to State employees. So, although they are not part of my jurisdiction, they did receive similar equity increases at the University of Minnesota. But that was civil service, not academic employees.

COMMISSIONER BUNZEL. If I asked you whether or not a member of the faculty of nursing with her or his responsibilities is comparable to a professor of law—

MS. ROTHCHILD. Are you a lawyer?

COMMISSIONER BUNZEL. No. That's one of my blessings; I'm not a lawyer—or, to continue, a professor of medicine: Does the system that you

have used in the community college system and in the State university system apply here? Could it be made to work here and how would it work? How would you apply—

MS. ROTHCHILD. I don't believe the Hay system, which is the system we use, has factors which account for the kinds of things that are done in faculty positions. I think, theoretically, it is possible to develop one. You could identify the factors in a faculty position which people would agree are worthy of compensation, for example, how many classes you teach or how many papers you write. The system we use was set up for your typical kind of corporate structure, which is a hierarchy, in which also fits the State executive branch. So it fits well with civil service types of jobs. The system we use does not fit faculty positions, and we have not used it as such. But I think the concept of having a job evaluation system that reflects values inherent in teaching for academic work could be developed.

COMMISSIONER BUNZEL. There are a number of universities in the private sector, and this picks up on another point that the Chairman raised with you: that when they are looking for faculty members, they are very attentive to their individual scholarship, their individual record, and their performance. There is, in a sense, at the senior level, particularly, what one might call a star system. Some people are so valuable to a university, particularly with a graduate school, that there is a competitive edge to a Harvard, or a Stanford or a Princeton or a Yale, or many other places bidding for them or looking for them. In fact, in many of these universities, faculty members in different departments get paid a differential because of their rank, because of the number of years they've been there, because of their production, their teaching, and a whole range of individually oriented criteria—in some sense, merit considerations. I gather that, for the kind of system that you applied to State employees in Minnesota, that none of this would really be able to be made to fit.

MS. ROTHCHILD. I think if that is the basis of pay, then it might not fit. I would point out that at the University of Minnesota, there was a landmark sex discrimination case. It didn't have to do with pay; it had to do with employment in the academic ranks. It had to do with a woman who was a chemistry professor who was denied tenure. They showed that the probability of never having hired a female chemistry professor was .000 something or other. So I think you could make a case in the academic world that there is discrimination in pay, too. On the other hand, you might account for it by other factors, and the individual factors could be those.

COMMISSIONER BUNZEL. Well, the reason Magic Johnson and Larry Bird get paid so well is because they are so very, very good, and they get paid better than some of their colleagues on the floor because they're better than they are. Now, that's always a dispute at the time when contracts are negotiated. I don't know whether or not you would believe that that's a system in principle that could apply.

Let us go back to the university context in terms of trying to make discriminating—not discriminatory—but discriminating judgments about individuals, whether that's worth maintaining or building into any system. Because one does very often try to hire the best qualified people, and you have to pay more for them.

MS. ROTHCHILD. Sure, and we allow for that. As I said, our law says "the primary factor." So, as I said before, we're dealing with the 90, 95 percent. We're not dealing with super-range doctors; we're not dealing with the Governor, who is one of a kind. We're dealing with the overall structure of the system and not dealing with those individual exceptions.

COMMISSIONER BUNZEL. Thank you, Mr. Chairman.

CHAIRMAN PENDLETON. Thank you, Mr. Bunzel.

COMMISSIONER BERRY. If I may interrupt, before you begin, can I just tag a point onto Dr. Bunzel's statement. I'll do it in 30 seconds. Okay?

I just wanted to point out for the record on this discussion about universities that you've just been through, I've been in about 5, 6, maybe 10 universities, some of them first rate, some second rate, some third and fourth rate, and they all have job evaluation systems. They may not be written down. I note in your paper that you talk about informal as well as formal evaluation systems. They have the superstars as well as little twinkling stars, or those who have no light at all. The reason why Earvin Magic Johnson, except for last night's game, in fact, is paid more is not because he's a man, but because there is an assessment that he's somehow better; and Larry Bird, who was better last night, gets paid, also, not because he's a man or because of the color of his skin, but because he's good, and I think your evaluation system does not account for those kinds of differences.

Ms. ROTHCHILD. No. I think we need to go back to what I mean by evaluation. We're evaluating the tasks of a job, and the job class might have 500 incumbents in it. Some of those incumbents might be first-rate performers and others might be duds. We're not dealing with evaluating individual performance. What we're talking about when we talk about our job evaluation system, the Hay system, is that you don't even know who is in those jobs. What you do is take the tasks that are typical of a job class. For example, for the class clerk typist II, these are the things a clerk typist does; it's this responsibility level; it takes this much know-how. That's our evaluation. We're not talking about any individual, stars or duds, either.

CHAIRMAN PENDLETON. You're talking about categories and not performance.

Ms. ROTHCHILD. Absolutely. We're not talking about people who are in these jobs; we're talking about the nature of the job itself.

CHAIRMAN PENDLETON. You answered my question about that part earlier.

M. CHAVEZ. I'd like to follow up on that. Yesterday, Dr. Steinberg talked about a study that I believe was done for New York State. It was an attempt to discover what, in fact, were the characteristics of jobs and how they were valued by the States. The example that she used was the difference between being a child care custodian, a person who takes care of children during the day, and someone who worked in a zoo. Now on the face of it, obviously, as a society, one would assume that we value our children more than we value our animals; yet, I wonder whether or not any account is taken of the relative dangers to the individual in those two occupations. One would assume that being in a classroom for 6 hours a day with 30 children was relatively less dangerous to the individual than handling poisonous snakes, being in cages with elephants, lions, tigers, etc. Now, in your system, when you go about assigning a value to a job (you mentioned accountability and responsibility and know-how), what attempt have you made to study the relative dangers of the jobs? Do you take into account studies of on-the-job accidents, health and safety factors, and if so, how do you incorporate those factors into your value system?

Ms. ROTHCHILD. The working condition factor would take that into account. We do have jobs that are fairly dangerous, in State hospitals for mentally retarded, people with mental problems. They're difficult, dangerous jobs. Our State prisons have difficult and dangerous jobs.

Ms. CHAVEZ. How do you go about assessing it, though? Is it simply an individual looking at it and saying, "Gee, I think that looks like a pretty dangerous job"? Or are there actual studies done of the numbers of accidents to workers in those jobs?

Ms. ROTHCHILD. You could easily do that. We do have data from the worker's compensation program. This shows that working for the welfare department or working for the department of corrections are clearly the most dangerous places to be in the State service. The Hay system doesn't take into account very specific kinds of danger. As I said, the Hay system is a general kind of system and has been used by jurisdictions of different types all over the country.

Ms. CHAVEZ. But if, in fact, you are trying to assign not only the value to the State, but also the worth of the job in some abstract sense, are you able to measure and does your system, in fact, take into account these differences in danger? Do you take into account not just differences in working conditions, whether or not a job is in an office and therefore has a pleasant surrounding, or in a surrounding that is less pleasant, but the actual dangers of the job? Are jobs to be compensated in a way that accounts for danger?

Ms. ROTHCHILD. As much as the Hay system accounts for working conditions. Each of the factors is supposed to be somewhat separate. You have a factor that has to do with know-how and a factor that has to do with responsibility and so on.

Ms. CHAVEZ. So how many value points are assigned to the relative likelihood of losing one's life on the job?

Ms. ROTHCHILD. As I said, the jobs where losing your life is a clear and present danger, such as the highway patrol, we exempted from the system. So we do make allowances for that kind of thing. As a practical matter, people work a lifetime in State hospitals or prisons and don't get killed. As a matter of fact, most highway patrol people don't get killed, either. But some do. It's not a perfect system. We're the first to admit it. It's a close approximation. We happen to think it's better than simply using dollar bills. We at least try to assess the types of tasks and responsibilities of a certain occupation and say that this is what it's worth.

Ms. CHAVEZ. Yesterday, the gentleman from Hay Associates, Dr. Bellak, suggested that one of the

reasons their system worked was that it required the voluntary cooperation of all the parties. You suggested that in Minnesota you do have voluntary cooperation and that the union has been—

Ms. ROTHCHILD. Actually, the Hay system was adopted unilaterally by the department of personnel.

Ms. CHAVEZ. But you have had a working cooperation with the parties since then.

Ms. ROTHCHILD. We have in pay equity, yes.

Ms. CHAVEZ. What about the union? Presumably, no salaries in your State were lowered as a result of your evaluation.

Ms. ROTHCHILD. We earmarked part of the salary supplement appropriation for equity increases. When the legislature appropriated money for State employees, there was some that was earmarked for pay equity and there was some for general adjustments. Those were negotiated at the bargaining table with our 11 different unions.

Ms. CHAVEZ. But you would not expect opposition from unions when all salaries go up.

Ms. ROTHCHILD. I understand that there are people who assume that there will be kind of one group of workers pitted against another, blue collar against white collar. But that has not been our experience. Certainly, if people want to encourage it, it could happen.

Ms. CHAVEZ. Thank you.

CHAIRMAN PENDLETON. Mr. Disler?

MR. DISLER. Ms. Rothchild, you mentioned that there are 16 or 17 States that have statutes that seem to use comparable worth language and terminology. In addition to your paper, the Commissioners have a staff paper that mentions those statutes. Some of those statutes have been on the books quite awhile. Some of them predate the 1963 Equal Pay Act; yet, there is very little case law there. I was wondering if you would care to speculate as to why those laws haven't been used, especially before the *Gunther* case, before Title VII became available. It struck me as very odd that there is a dearth of case law there. Is that because people don't understand what those statutes do?

Ms. ROTHCHILD. I think you also have to recognize the recency of attention to pay equity. I also think some of the laws are weak. The one I'm familiar with, in Maine, has something like a $500 fine. So, as a real remedy, I would guess that it's not much in use. Theoretically, these laws could be used, and they might be in the future.

MR. DISLER. Let me ask you something else. Would you agree that a different system than the one used by Minnesota, and one that Minnesota would view as valid, might have yielded or might today yield different points for different jobs—a different evaluation?

Ms. ROTHCHILD. My understanding is that there might be slight variations, but that, in general, the evaluation systems are quite similar. They yield pretty much the same results although you could find some differences.

MR. DISLER. But wouldn't that turn in part on what compensable factors and what weights are used? I thought earlier you acknowledged that that there seems to be quite a bit of value and subjectivity reflected in these job evaluation studies.

Ms. ROTHCHILD. Yes. My guess is that if you develop an entirely new system, as they're doing in New York State, as they're doing at the University of Minnesota, you might end up with very different ratings. But the current systems are all generated by management consultants, and they yield similar results. They're not identical, obviously.

MR. DISLER. In the system that you use, what weight was given, if any, to physical effort?

Ms. ROTHCHILD. That, again, would be working conditions, and that is a small part of the point total. As I said, the system was adopted before I came, and although I'm generally familiar with it, I don't know how many points for what.

MR. DISLER. I was also very much struck—with the risk of extending this a little bit longer, and I appreciate your dealing with this head on—by the use of the terminology pay equity and comparable worth. Let me ask you your reaction to this. Would it be more accurate to say that pay equity is the objective and comparable worth might be a means to it?

Ms. ROTHCHILD. I suppose you could say that. I think of comparable worth as standing for a concept. Pay equity also stands for a concept. They both are tools to try to identify and eliminate disparity in wages.

MR. DISLER. The reason why I asked that is that the terms do have somewhat different connotations, and it just seems to me that if you define these two terms to mean the same thing, equal pay for work of equal value, and you're having a debate on this issue, and someone comes forward in favor of equal pay for work of equal value and is able to label him or herself as for pay equity and put a skeptic on the

other side, it's a different connotation to put the skeptic in a position of arguing against pay equity as opposed to comparable worth. Would you agree with that?

Ms. ROTHCHILD. I think that comparable worth has probably more negative connotations because that's the term that has been around longer. I'm a political creature. I think pay equity sounds better.

MR. DISLER. Thank you.

CHAIRMAN PENDLETON. Commissioner Destro?

COMMISSIONER DESTRO. I have two short questions and I've narrowed it down to one. In the job categories where you've indicated that the number of Hay points is below what the salary range ought to be, would those be jobs which reflect a national job market as opposed to a Minnesota job market? My understanding is that in the jobs which are below, male jobs which are below would be above the Minnesota market, in any event, by about 15 percent.

Ms. ROTHCHILD. No. The female jobs that were below the line were still above the market.

COMMISSIONER DESTRO. No. That's not what I'm asking. I am looking now at what he said in two of his questions. The first one concerned the jobs which are paid above that which their Hay point totals would predict; are those jobs, jobs in which Minnesota would compete for individuals in the national market?

Ms. ROTHCHILD. No. They are predominantly in the State department of transportation, your highway jobs, your highway maintenance workers. The male jobs that are above the line are the ones that have been unionized longest. Pay for those jobs is not related to competing in a national market. They simply reflect a history of union activity.

COMMISSIONER DESTRO. Okay. And then the other question was with respect to jobs below that predictive index: The job of achieving pay equity for those workers is then left to the union and not to the State as a matter of collective bargaining?

Ms. ROTHCHILD. That is correct.

COMMISSIONER DESTRO. Thank you.

CHAIRMAN PENDLETON. Thank you. We will take a short break and change the set.

[Recess.]

PANEL: LEGAL PERSPECTIVES AND PRECEDENTS

CHAIRMAN PENDLETON. I would like to make some introductory comments prior to the next panel. I realize we'll be taking part of your time, but I will try our best to get back on schedule.

Our next panel will be a review of the legal issues and the case law relevant to comparable worth. Mr. Robert Williams is a partner in the Washington, D.C., law firm of McGuiness & Williams and represents management in various labor and equal employment opportunity issues. Providing another viewpoint will be Mr. Winn Newman, also an attorney in private practice in Washington, D.C., who represents the union and individuals in various employment discrimination matters. He is the attorney for the plaintiff AFSCME in the State of Washington case.

Our presentation will go first with Mr. Newman and then Mr. Williams. What we would prefer, gentlemen, if you would accommodate us, is to give up to a 20-minute overview. I must say, your papers are excellent and I am sure I speak for my fellow Commissioners. If you give us that summation, then we can get into some exchanges between the Commissioners and you, similar to what happened with Ms. Rothchild. Mr. Newman, you're on.

Statement of Winn Newman, Winn Newman and Associates, Washington, D.C.

MR. NEWMAN. Thank you. I am pleased to address you this morning on Title VII's application to claims of sex-based wage discrimination.

On this issue the law is clear. There is no dispute. All sex-based wage discrimination is illegal under Title VII. Whatever uncertainity may have clouded this matter 4 years ago, it was firmly and emphatically laid to rest in the Supreme Court decision in *County of Washington* v. *Gunther* and its denial of *certiorari* in *IUE* v. *Westinghouse*. If the reason women are paid less than men is because of their sex, then the Title VII violation stands on an equal footing with a violation which exists when blacks are paid less than whites because of race, when Hispanics are paid less than Anglos because of national origin, or Jews are paid less than Christians because of religion. The issue is not one which is affected by philosophy or economic theory. It's simply today, given the state of the law, garden variety discrimination to which Title VII's prohibitions fully apply.

These hearings, however, are styled a consultation on comparable worth and have been heavily dominated by testimony from economists and sociologists. It is important, in our judgment, not to get

tripped up by this so-called comparable worth terminology; nor should the issue at stake here, namely, ending wage discrimination, be lost in arguments and analogies which focus on aggregated national wage data rather than on sex-based wage disparity in various jobs in a particular workplace. Nor should the issue of wage discrimination be confused with the discussion of a global picture, rather than the unlawful discrimination of an individual employer.

Comparable worth is nothing more than a euphemism with no legal significance. Title VII prohibits discrimination. It says nothing about comparable worth. Title VII prohibits discrimination in any form and on any basis. Thus, the focus in any lawsuit under Title VII, whether dubbed a wage discrimination suit or a comparable worth suit, pay equity, or any other kind of suit is simply: Did the employer engage in prohibited discrimination in setting or maintaining wages in jobs occupied by women or minorities? The issue is not whether Title VII requires equal pay for comparable work, but rather did the employer pay minorities or women less for their work because of race, national origin, etc.

Indeed, it matters not whether the male jobs with which the women's jobs are being compared are paid at a rate of $2 an hour or $10 an hour. What this issue requires is that if the women's jobs require equal skill, effort, and responsibility, the women must be paid the same $2 or the same $10, and the issue has nothing to do with what jobs are worth in dollars. It is purely a discrimination issue.

Indeed, in every wage discrimination suit I have filed or participated in, beginning as far back as 1971, that has been our focus: wage discrimination, not comparable worth. *AFSCME* v. *Washington State* or *IUE* v. *Westinghouse* is no different.

The definition of comparable worth which Mr. Williams has articulated, namely, that compensation should be proportional to the intrinsic work or value of jobs as measured on some common scale, is not what we—those of us who brought these lawsuits—mean by the phrase wage discrimination. Indeed, that definition, by its terms and practical application in various situations, has nothing whatsoever to do with discrimination. For example, there is no discrimination where men are working in two categories of male jobs of equal value and are paid different rates. That's not discrimination prohibited by law, and that's the kind of thing that Minnesota did not touch for exactly that reason. Clearly, to that extent, I agree with Mr. Williams. Nor is it necessarily the case that wage differentials between any individual female classification and a comparable male classification are necessarily discriminatory.

What does become significant, however, as relevant evidence of wage discrimination is a consistent pattern of underpayment of women's jobs. We had that pattern in *Washington State,* in *IUE* v. *Westinghouse,* and I dare say we will find that pattern in virtually every workplace, public and private, in this country, or at least those that have hired women—that did not discriminate in the *hiring* of women. Whenever they hired women, they invariably segregated them. So to the extent that you have a wage structure based on segregation, you do not have it in workplaces where males alone are employed.

The point here is the discrimination that we're talking about that Title VII prohibits relates to the way an employer evaluates his jobs. Indeed, to put this another way in terms of a pattern of discrimination: If Jack and Jill, if you will, went up the hill, and Jack reached the top before Jill, you don't necessarily have a violation of the law. You can't necessarily infer discrimination. But on the other hand, if all the Jacks and all the Jims and all the Joes reach the top of the hill before all the Jills and all the Janets and all the Joannes, then commonsense suggests it is reasonable to infer that the explanation as to why all of the women lagged behind all of the men is sex discrimination.

Similarly, where all of the employees doing certain jobs requiring a specific composite of skill, effort, responsibility, and working conditions are paid at a lower rate than other employees working in jobs requiring an identical composite and the lower paid employees are predominantly women, commonsense suggests that the reason for the lower pay is sex discrimination. Again, for example, if even highly skilled female occupations which are characterized by an extreme shortage of workers relative to demand are paid less than unskilled entry-level male jobs in which there is no shortage, like toll collectors, it becomes reasonable for courts to infer that the reason the men are paid more is because of their sex.

The House Committee on Government Operations recognizes this important distinction between comparable worth and wage discrimination, and just 2 weeks ago it issued a report in which it took the EEOC to task for failure to enforce Title VII's prohibition against sex-based wage discrimination.

That unanimous report from both political parties confirmed that the numerous successful recent wage discrimination suits, including *Washington State,* are simply Title VII standard fare. These suits have been and will continue to be analyzed against a traditional Title VII backdrop, consistent with the act's broad remedial purposes and the national priority which Congress has attached to the eradication of all forms and vestiges of employment discrimination. This is not some wild-eyed, liberal notion. It is simply what Congress intended and demanded in enacting Title VII, and the courts, including the Supreme Court, require no less. Indeed, if there is anything radical in this whole notion, it's what Congress did in 1964 when it passed the Civil Rights Act. That was radical. That was fundamentally radical, if you will. It said to employers: Don't discriminate anymore. We're going to insist that it not be business as usual, and we're going to change and interfere with the way of doing business so that you can no longer discriminate.

Four years ago, victims of wage discrimination who sought redress in the courts were confronted by arguments from lawyers and employers that even the most blatant, the most flagrant, the most egregious practices of sex-based wage discrimination were shielded from Title VII review if the female plaintiffs were not performing work identical to that of male employees. That position was advanced with adamance in case after case until it was finally rejected by the Supreme Court in *Gunther.* Now, the tack taken by those same people is different. But the basic theme is consistent. Now the argument is that Title VII's prohibition against sex-based wage discrimination must be narrowly interpreted. But this argument, too, is flatly inconsistent with the salutory purposes underlying Title VII's enactment, its legislative history, and court decisions interpreting and implementing it.

The Supreme Court stated, in the *Franks* v. *Bowman* decision, that in enacting Title VII Congress intended to prohibit all practice in whatever form that would create inequality in employment opportunity due to discrimination on the basis of race, sex, or national origin. It ordained that policies outlawing such discrimination should have the highest national priority. The Court went on to say that one of the central purposes of Title VII is to make persons whole for injuries suffered on account of unlawful employment discrimination. One might think that, since defending discrimination is a matter of highest national priority, items such as market rates will become rather secondary.

Congress had to strike the balance between ending discrimination or allowing it to be perpetuated, and Congress struck this balance on the side of ending discrimination. In so doing, Congress recognized that the task would not necessarily be easy and that some disruption of business as usual in the so-called free market was a necessary byproduct. Notwithstanding this recognition, Congress decided to close shop firmly and emphatically on all forms of racial, sex, religious, or ethnic employment discrimination. Under these circumstances, it simply defies reason to assert that discriminatory compensation practices on whatever basis are entitled to any degree of insulation from Title VII's otherwise far-reaching and broadly remedial scope.

The argument advanced of late by opponents of Title VII's prohibition of sex-based wage discrimination is to suggest that Title VII is limited to practices of intentional wage discrimination. It's just another way of saying that one particular type of discrimination—compensation—on one particular basis—sex—is entitled to a degree of deference and insulation from Title VII coverage that is not tolerated for any other form of discrimination.

To paraphrase the Third Circuit in *IUE* v. *Westinghouse,* proponents of this intentional discrimination theory necessarily argue that Congress intended to permit employers to discriminate against women in a way in which it would not permit them to discriminate against blacks or whites, Jews or gentiles, Protestants or Catholics, Italians or Irish, or any other group protected by the act. The court concluded that no such intent could be ascribed to Congress, nor is there any real support for this radical proposition in case law. Indeed, such a proposition—that sex-based wage discrimination should be treated differently from other forms of discrimination claims—coming 20 years after the passage of the Civil Rights Act, must itself be viewed as a radical proposal and totally inconsistent with the law. Citing cases, as my opponents generally do, that arose prior to the issuance of the *Gunther* decision would appear to be totally irrelevant.

In *Gunther* the Supreme Court made it emphatically clear that its decision was limited to determining whether Title VII wage claims were controlled by the equal work requirement of the EPA. The Court said "no" and beyond that expressly declined to rule on any other matter. But this approach is

typical for the Court. Thus, the Supreme Court decision in *Gunther* provides little or no support for the employer proposition that sex-based wage discrimination must be treated differently from other practices which are discriminatory both in purpose and/or effect. Reliance on *Gunther* for this proposition requires a distorted reading of the case and amounts to nothing more than sheer wishful speculation. Moreover, this argument runs directly counter to the Court's teaching in the *Manhart* case that sex and race-based prohibitions of discrimination enjoy equal treatment under Title VII.

I cited in my written testimony a number of lower courts that applied both disparate treatment and disparate impact analyses to wage discrimination claims. Indeed, one such case which proceeded on a disparate impact theory, *Kouba* v. *Allstate,* was settled just this week prior to completion of trial, after remand from the Ninth Circuit, for millions of dollars in backpay. It is indeed hard to imagine why a well-established corporation like Allstate Insurance Company would cough up millions of dollars to settle a disparate impact case if it didn't think there might be some credence to that theory.

Finally, in *Brennan* v. *Corning Glass,* the only Supreme Court decision on the merits under the Equal Pay Act, the Court noted favorably the *Griggs* case, thereby indicating its incorporation of disparate impact analysis into Equal Pay Act cases. The Court said: "We conclude that the company's continued discrimination, though phrased in terms of a neutral factor other than sex, nevertheless operated to perpetuate the effects of the company's prior illegal practice of paying women less than men for equal work." This holding of *Corning* has never been overruled, and lower courts have followed suit. If disparate impact analysis applies to equal pay cases, it applies as well to sex-based wage discrimination cases under Title VII. Thus, there is absolutely no reason to suggest or conclude that Title VII sex-based wage discrimination cases will be analyzed any differently than all other types of Title VII cases.

A related suggestion is that a different standard of evidentiary proof applies to claims of sex-based wage discrimination than to other violations of Title VII. Again, nothing in Title VII itself, its legislative history, or authoritative case law lends credence to this suggestion. While this is not the place to have a detailed discussion of the law, it is clear, for example, that relevant statistical showings, either alone or in conjunction with other evidence, are in the words of the Supreme Court in the *Teamsters* case, a telltale sign of sex-based wage discrimination. Similarly, evidence of other discriminatory practices, like initial assignment discrimination, job segregation, sex-biased job classifications, discrimination in promotions and transfer, denial of employment benefits, and equal pay violations, is probative of sex-based wage discrimination, prohibited by Title VII.

Finally, evidence based on the results of an employer's own job evaluation which shows a consistent pattern of underpayment of women's jobs relative to men's jobs requiring an equal composite of skill, effort, responsibility, and working conditions is highly probative of sex-based wage discrimination. This is all standard Title VII proof. Similar types of evidence are used in every other kind of Title VII case. Nothing is different in the wage discrimination context.

At this point, I would like to focus a bit on the role that job evaluation plays in the context of wage discrimination cases in hopes of clarifying some of the confusion that has arisen.

In every wage discrimination case in which job evaluation has been an element of proof, like *Washington State,* there is a clear showing the employer deviated from the results of its own job evaluation in setting the wage rates for women's jobs, but not for men's jobs. Put another way, there was a consistent pattern of underpayment of women's jobs relative to their evaluated worth while men's jobs were paid in accordance with their evaluated worth, as determined *by the employer's own job evaluation plan.* The reliance on job evaluation results and corresponding wage rates in this context clearly is not designed to compel employers in all instances to adhere rigidly to the results of their own job evaluation. But these results do show that employers have deviated in setting rates for women's jobs and not for men's jobs. This is what was involved in *Gunther* and *IUE* v. *Westinghouse* and *AFSCME* v. *State of Washington.* Where there is such sex-based, sex-biased deviation, the forces of commonsense and logic join with the law to suggest, absent reasonable explanation, that the reason for the deviation falling along sex lines is sex discrimination, and not some neutral factor.

Job evaluation also becomes relevant for purposes of establishing a remedy. There is well-established law that, once a court finds a violation of law based

on the evidence presented, that it has broad discretion in establishing a remedy. To do that, it may itself order a job evaluation or any other method it chooses in order to determine that remedy. Indeed, in *Washington State,* Judge Tanner did order the employer to evaluate, using the same method it had in its earlier evaluation, some 500 additional jobs. I emphasize that because so many people talk about the fact that if not for the job evaluation, that decision would have gone the other way. The fact is that Tanner has ordered 10 times as many job evaluations to be performed as the employer itself had done previously and to be performed at the employer's cost.

Now, I think it should also be clearly understood that job evaluation is an employer tool and not something invented by unions; it's not something invented by plaintiffs. Employers have been using job evaluation, defending job evaluation for the last 60, 70 years. They have used it in order to defend against equal pay cases. They lobbied to have it considered as a defense to equal pay cases. It is only now when job evaluation has been used against employers that they challenge its effectiveness.

Another major objection raised by employers in wage discrimination suits is that job evaluation does not set wages. Rather, it is "the market" that sets wages, and "the market" is a sacred cow. While the Supreme Court has already rejected the market defense in both *Corning* and in *Norris* v. *Arizona,* it is clear, however, that this issue continues, and there may also be some dispute in some of the lower courts on that issue today. But, contrary to the impression conveyed by defendants' arguments, there is no objective market concept that fleshes out wage rates for various jobs. Reliance on the market to set wages is characterized by so many variables that it could mean something different to virtually every employer. The employer decides whom to survey, what kind of survey, which jobs to survey, and so on. Let me just give you some examples—

CHAIRMAN PENDLETON. You're running out of your time.

MR. NEWMAN. All right. I would suggest reviewing the written testimony for *Washington State.* That testimony shows that what happens typically in job evaluations and surveys is that the market rates are not always complied with. There are deviations from them. The State of Washington had two different systems, and it paid two different rates in the State for the same job, although it was based on the same survey. In other words, each of the systems deviated from the survey when they chose to. It's hard to say in Washington State that there is such a thing as the market rate, given all this—given the kind of deviation that went on. Indeed, when faced with the option of complying with the market or continuing the internal relations where complying may have upset the internal relationship of other jobs, the State of Washington *always opted to preserve the historical relationship* of the jobs rather than give the increases determined by the market. All of this suggests that preserving the historical relationship was more important to the State, and preserving historical relationships, given what we know about sex discrimination, is a euphemism for preserving historical discrimination.

I would close by emphasizing again that the law is clear. I think it is time for those agencies and individuals who are genuinely committed to the purposes of Title VII of the Civil Rights Act, as well as the fundamental notions of justice and equity, to get on with the business of vigorous law enforcement and bring about an end to race- and sex-based wage discrimination. The time for consultation has long since passed. The time for factfinding has passed. To the extent that such exercises are necessary or appropriate at this point, their proper role is simply to determine how we should proceed now to break the back of sex-based wage discrimination in this country.

In light of this, I would call upon this Commission to exercise its authority and further implement its congressional mandate to prod the civil rights enforcement agencies—EEOC, Justice, or DOL—to take up the gauntlet once again, as those agencies did previously in vigorously supporting the plaintiffs in the *IUE* and *Gunther* cases. Ending discrimination should not be a political issue. It is a matter of simple justice. Thank you very much. I'm sorry I spoke a little over.

CHAIRMAN PENDLETON. Thank you, Mr. Newman.

Mr. Williams?

Statement of Robert E. Williams, Williams & McGuiness, Washington, D.C.

MR. WILLIAMS. Thank you, Mr. Chairman. I would like to thank the Commission for the opportunity to participate in this consultation. Certainly, this is an excellent opportunity to address a number of very basic questions surrounding comparable worth

and what a policy of comparable worth really would entail.

By the way, it's my understanding that the subject of this session is comparable worth. I thought at the outset that I was hearing Mr. Newman say that he's not advocating comparable worth, although he went on and I'm not so sure that, in terms of its use as a methodology to prove discrimination that, in fact, he's not really just advocating comparable worth under another label.

My remarks this morning will focus on the legal aspects of comparable worth. At the outset, though, I think it's important, in light of much of the discussion that I've heard here, to distinguish between the term comparable worth and that other term that has been invoked so frequently, that is, pay equity. The two are not synonymous. Contrary to the implication of some of your earlier speakers, you don't have to endorse a policy of comparable worth in order to be for pay equity.

Pay equity is a goal that everyone can and should support, and in my experience, most employers do strive continually to maintain pay structures that are perceived as equitable. I stress the word perceived because equity in pay is ultimately a matter of perception. Reasonable minds can always differ about what is a fair wage for a given job. Our traditional mechanism for resolving those differences has been to leave it up to the parties involved, or their representatives, to agree on a wage rate that the employer is willing to pay and the workers are willing to work for, either through individual dealings or through collective bargaining. As a result, the traditional legal framework for compensation rights in this country has consisted primarily of contractual provisions, not statutory laws or regulations. This doesn't mean the law takes a completely laissez faire approach to compensation practices. But, aside from setting minimum wage requirements and the like, our legislators have wisely stayed away from attempts to dictate or pass judgment on or strictly regulate how much or on what basis jobs should be paid.

Of course, the law does prohibit discrimination in pay. This means that although a worker and employer can take virtually any factors they may choose into account in deciding what they think is a fair wage, they cannot take into account the race, sex, age, religion, or national origin of the worker. This ban on discrimination is well settled. It takes the form of various specific legal protections, most of which are well accepted and noncontroversial.

To put comparable worth in perspective from a legal standpoint, I think we need to differentiate between specific kinds of legal requirements, about which there is no argument, and new or expanded legal theories that have not yet been accepted by the Court. On the one hand, we all know existing law requires equal pay for equal work. This applies to jobs that are the same or substantially identical in content so that they can be readily compared. As such, it's a logical, workable requirement, because it doesn't entail any subjective judgments about the relative worth of different jobs or different job functions.

Secondly, existing law guarantees that all workers be accorded an equal right of access to compete for higher paying jobs. There has been a great deal of talk about job segregation and its relation to the male-female earnings gap. So it's important to understand that where there is job segregation caused by an employer, there's a remedy for that. To the extent that employers are responsible for concentrating men in some jobs and women in other jobs because of discrimination in recruiting or screening or hiring or assignments or other practices, the law clearly provides a remedy. That remedy can include reimbursement for lost earnings. So it is not necessary to adopt any new legal theory based on comparable worth in order to protect victims of employer-caused job segregation.

Moreover, even where women have voluntarily chosen predominantly female jobs, there's no question that the law protects them against intentional wage discrimination. The *Gunther* case, without endorsing comparable worth, made it clear that where a woman can prove that her job has been paid less because she is a woman, or because the job is predominantly held by women, she's entitled to a remedy even if there is no higher paid male performing equal work.

So, in the final analysis, the legal controversy here really boils down to a question of evidence. What kind of evidence does it take to prove wage discrimination where, number one, the jobs in question involve different kinds of work, and number two, they have not been illegally segregated by the employer? Some examples are obvious. Mr. Newman adverted to some of them. The Supreme Court indicated in *Gunther* that where an employer admits that he paid less because the job was held by

a woman, obviously that's discrimination and for that there's a remedy. The Court also said that the use of a transparently sex-biased job evaluation system is illegal. But when we get beyond these obvious, blatant examples, the task of trying to prove the reasons for pay differences between jobs that involve different work and have not been deliberately segregated becomes extremely speculative. The hard legal questions arise when it comes to deciding what type of evidence will support an inference of discrimination under these circumstances when there is no obvious violation. This is where Mr. Newman and I part company.

Contrary to Mr. Newman's thesis, the Supreme Court did not say in *Gunther* that we should automatically apply all the standards of proof developed in other kinds of employment discrimination cases. It stayed far away from holding that discrimination can be inferred from the mere fact that some job evaluation study has concluded that a disparity exists between predominantly male and predominantly female jobs. In this regard, it's important to understand that the Court in *Gunther* did not find that the plaintiffs had made out a prima facie case of discrimination and expressly said it wasn't making any such finding.

The plaintiffs in that case had showed that their employer conducted a study which indicated that women jail matrons should be paid 95 percent as much as men jail guards, but then proceeded to pay the matrons only 70 percent as much as the guards. The court never said that disparity, or that failure to pay the 95 percent, proved discrimination, or that it would support an inference of discrimination. It merely held that the plaintiffs were entitled to an opportunity to present whatever evidence they might have that the disparity was, in fact, discriminatorily motivated. The truth is, we'll never know whether the plaintiffs actually had any such proof or not in that case, because the case was settled on remand without any further trial.

So there really is nothing in *Gunther* that supports the basic evidentiary premises of comparable worth. That is, the Court did not say that rates of pay for different jobs have to be proportional on some scale, predominantly male or predominantly female or not; nor did it say that an employer who conducts a job evaluation study necessarily has to conform its pay rates to the results of his study. The Court didn't reach those issues. But the majority opinion does strongly intimate that the standards of proof developed in other Title VII areas are not automatically applicable in this area and that some kind of proof of intentional pay discrimination apart from your comparable worth study is needed to establish a violation.

The lower court decisions since *Gunther* generally support this interpretation. The cases are discussed at length in my paper, and I won't reiterate them specifically here, except to observe that the opinions reflect a healthy skepticism about the reliability of job evaluations as proof of discrimination. Several courts have remarked critically about the subjectivity and abstract nature of job evaluations. True, a few courts have indicated that job evaluations may constitute evidence of discrimination in certain circumstances. But most have not gone that far. By and large, the cases seem to reflect a commonsense judicial recognition of the limitations inherent in job evaluation techniques.

Now, whenever a representative of employers starts to talk about the limitations inherent in job evaluations, the response is that employers regularly evaluate jobs themselves and employers have argued in favor of job evaluations. The argument is made that it is, therefore, somehow inconsistent or improper for employers to object to the use of job evaluations in court as proof of discrimination. But that overlooks the fundamentally different purposes involved.

Certainly, job evaluations can be a very useful tool within the context of an organization for management decisionmaking, for promoting consensus about what jobs ought to be paid. But there should never be any illusion that these processes can prove job values or relative job values to a legal certainty. They were never designed for that purpose. Job evaluations were generally designed only to be advisory, not binding. The only binding determination of job worth is the wage rate the parties ultimately agree on, and that may or may not be the rate indicated by a job evaluation study. Very often studies are conducted and then the wage rates are adjusted considerably up or down after the initial job evaluation study is completed, to reflect the influence of legitimate factors other than so-called internal equity.

Therefore, it's a mistake to treat job evaluations as more than they really are. That seems to be what happened in the *Washington State* case. The State had commissioned some studies that placed numerical values on State jobs. But no agreement was

reached, at least until 1983, that those numbers should be the basis for the State's pay scales. This was not a case in which the employer adopted a wage system and then deviated from it selectively to the disadvantage of women or minorities. The State simply conducted some studies, but then chose for the time being to stick with its existing pay system, which was based on prevailing wage rates.

Contrary to Judge Tanner, nothing in the law obliges an employer to adopt a new pay structure simply because some job evaluation study indicates that a different set of pay relationships would be more equitable and more favorable to certain protected groups. There's an infinite variety of different ways in which jobs can be evaluated, and one can always come up with some system that would be more advantageous to some segment of the work force than the system currently in effect. The real issue, which Judge Tanner never quite brought into focus, is whether the prevailing wage system that the State had been using was designed or administered with discriminatory intent. To be sure, Judge Tanner did refer to several factors which he said evidenced intentional discrimination. But it's clear that the principal findings under both the disparate treatment, or intent, theory and under the disparate impact, or effects, theory were grounded in substantial part on a comparable worth premise. The bottom line fact is that he treated the State's so-called comparable worth job evaluation study as the key, valid, and binding measure of the relative worth of the job to the exclusion of any other measurement.

The irony of this reasoning is that it creates a disincentive to employers to conduct job evaluation studies at all. If any employer who conducts a job evaluation is legally obliged to implement its result "right now," as Judge Tanner ruled, then there's no room left in our system for negotiated or phased-in solutions. There's no room to use job evaluations as a diagnostic tool, unless the employer is prepared in advance to implement immediately whatever pay changes that particular study would suggest, without regard to economic considerations, bargaining demands, or the possibility that some other study might produce different results. All of that would be unfortunate, in my view, because I do believe job evaluations can be very helpful in trying to achieve a consensus about equitable pay rates within the traditional legal framework.

Finally, another very questionable aspect of the *Washington State* decision is that it appears to leave no room for consideration of labor market factors. Existing case law overwhelmingly sanctions pay differences based on different market rates for different jobs. Mr. Newman has pointed to some cases holding that you can't apply different market rates to different classes of people doing the same work. That's true, but it's beside the point. We are concerned here with people in different occupations to which different supply and demand factors apply.

Judge Tanner's unwillingness to recognize a labor market defense in that context is completely at odds with the weight of legal authority. Another Federal district court judge, Judge Barbara Crabb of the Western District of Wisconsin, wrote in a similar context, and I quote:

> Nothing in the law indicates that the employer's liability extends to conditions in the marketplace which it did not create. Nothing indicates that it is improper for an employer to pay the wage rate necessary to compete in the marketplace for qualified applicants.

I submit to you that Judge Crabb's view is the better view. Unless we're prepared to alter our whole economic system, it's simply not realistic to adopt legal standards that would effectively force employers to ignore outside market factors in setting wages.

If the market treats men more favorably than women, the answer is not to abandon or to distort the free market system, but to continue to work for the elimination of factors that tend to restrict women's relative bargaining power in the labor market, such as discriminatory barriers to job mobility. The laws we need to accomplish this are already in place. We don't need new legislation or expanded judicial construction. But because pay equity is a matter of perception, rather than a concrete, provable quantity, this will always be a controversial area. For that reason, the goal of pay equity is best achieved through voluntary mechanisms designed to promote consensus, rather than through externally imposed legal requirements.

The use of job evaluation techniques in voluntary, nonbinding frameworks is a fine idea which many employers support. But new laws, regulations, or court-imposed requirements that would mandate job evaluations, or give binding effect to job evaluation studies, would not be either sound or workable, and

this Commission should not endorse such new requirements. Thank you.

CHAIRMAN PENDLETON. Gentlemen, thank you very much.

Mr. Abram?

VICE CHAIRMAN ABRAM. Mr. Williams, it's your contention that the law protects women against job segregation under Title VII?

MR. WILLIAMS. Yes.

VICE CHAIRMAN ABRAM. And also blacks and other protected classes. Is that true?

MR. WILLIAMS. Absolutely.

VICE CHAIRMAN ABRAM. It is your understanding that the Equal Pay Act requires equal pay for equal work?

MR. WILLIAMS. Yes.

VICE CHAIRMAN ABRAM. As regard to work done by women and men, I gather the law, as you understand it, forbids discrimination against women and other protected classes in pay because they are women, or blacks, or both, regardless of what men are paid?

MR. WILLIAMS. Yes.

VICE CHAIRMAN ABRAM. And that's the ruling of the *Gunther* case and other cases?

MR. WILLIAMS. Yes. The question is how one proves—

VICE CHAIRMAN ABRAM. Yes. I understand that. Now, if existing law protects, as we had discussed a moment ago, the comparable pay litigation attempts to substitute job evaluations for proofs under the Equal Pay Act—is that right?

MR. WILLIAMS. Yes.

VICE CHAIRMAN ABRAM. And those proofs were established by Congress, were they not, equal pay for equal work, defined as work equal in skill, effort, responsibility, and working conditions? Is that right?

MR. WILLIAMS. Yes.

VICE CHAIRMAN ABRAM. Now, the litigation which characterizes the comparable worth litigation seeks to substitute human judgment to these more objective factors which the Congress outlines in the Equal Pay Act. Is that correct?

MR. WILLIAMS. I think that's correct.

VICE CHAIRMAN ABRAM. I'd like to ask you whether job evaluations should be the standards, in your judgment, of evaluation rather than equal skill, effort, responsibility, working conditions—whether or not job evaluations are better or more fair performed by the use of human judgment rather than those objective criteria?

MR. WILLIAMS. I'm not sure that I am completely following the distinction you're making. Because, of course, skill, effort, responsibility, and working conditions are traditional factors in job evaluation.

VICE CHAIRMAN ABRAM. I understand that.

MR. WILLIAMS. And may or may not be—

VICE CHAIRMAN ABRAM. Then I'll ask you a prior question. What judgmental factors—you spoke of subjective judgment—what subjective judgmental factors are intruded or insinuated in the comparable worth type of evidence as opposed to the evidence that's adducible in an equal pay case?

MR. WILLIAMS. The problem is that in an equal pay case you're dealing with jobs which, because of identity or substantial identity of job content, can be readily compared. In a comparable worth context—

VICE CHAIRMAN ABRAM. You're comparing apples and oranges.

MR. WILLIAMS. The jobs are not sufficiently similar that one can look at them as a whole and say these jobs can reasonably be equated. Instead, one tries to look at combinations of job components. At that point, you get into innumerable subjective judgments about what components should be valued, what weight should be put on them, and whether the weight or the value judgments of those who conducted the job evaluation studies are necessarily the only decisions that can be made of those things.

VICE CHAIRMAN ABRAM. Have you had any experience in court with attempts to reach a objective judgment of comparable worth in the trial courts?

MR. WILLIAMS. I've been fortunate up to this point that my clients have not been sued on such a theory. But I have dealt with these issues in the arbitration context, in a number of cases dealing with specific jobs. Of course, this is in the context where the parties themselves have agreed on an overall system of job evaluation and have agreed essentially, or in principle, on the factors that would be applied and how they would be weighted. Yet, even in that framework, we find that there is always a great deal of room for differences of opinion about how the factors relate to particular jobs.

VICE CHAIRMAN ABRAM. Even when you've agreed on the overall framework in a collective-bargaining process or otherwise, and disputes arise as to the points to be assigned to particular elements of jobs, even in those cases you, I presume, present experts who swear on one side and on the other. Is

that correct? Do you find always that these experts agree?

MR. WILLIAMS. If you found that, you wouldn't have any cases. Invariably, the experts on the opposing sides disagree. So it's left to some third party—usually in my experience it's been put up to an arbitrator—to decide whether one expert is right or the other expert is right, or whether the truth lies somewhere in between.

VICE CHAIRMAN ABRAM. So the experts, who are giving testimony under oath and who have had vast experience, do give disparate opinions with respect to the values to be assigned to a job on which points have been agreed?

MR. WILLIAMS. Very definitely.

VICE CHAIRMAN ABRAM. Productive of litigation?

MR. WILLIAMS. As I say, in my experience it's gone as far as arbitration and, certainly, there's a potential always that those cases could go on to court. If these kinds of proof are adopted in the Title VII context, there's no question it would be productive of litigation.

VICE CHAIRMAN ABRAM. May I ask whether or not the principle of public justice which prohibits disparity in wages between occupations of comparable worth, whether the same principle of justice would, in your judgment, prohibit disparities between various jobs, described as pay disparities between various jobs of comparable worth regardless of whether or not they are held by males or females, or blacks or whites?

MR. WILLIAMS. If I understand your question, Commissioner, I think I would agree that there certainly is—although there might not be discrimination in the Title VII sense or the Equal Pay Act sense. But if a system is adopted and wage disparities are eliminated for so-called sex-segregated jobs—I use that in the sense of jobs that are not necessarily intentionally segregated, but predominantly one sex or the other—that if those disparities are eliminated, but in those jobs where disparity exists and there is no sex segregation, there is tremendous potential for labor strife. But I also think there could be legitimate contentions, in that context, that the people in the nonsegregated jobs are suffering discrimination based on a sex consideration.

VICE CHAIRMAN ABRAM. Well, you're going to have justice, and you have a system by which you can evaluate what various jobs are worth to the employer. Justice should demand that each job be compensated according to its equivalent value, regardless of whether or not there's sex or race discrimination. Wouldn't justice require that?

MR. WILLIAMS. I think consistency with the basic comparable worth premise would require that. Whether that's justice or not is debatable.

VICE CHAIRMAN ABRAM. Well, consistency then, under the claim of justice, or whatever, might easily be—as we heard this morning from Ms. Rothchild—could easily be turned into the entering wedge for some kind of human engineering by a government decree of a wage structure of the country outside the collective-bargaining system and irrespective of existing discrimination. Those arguments are certainly proper; aren't they?

MR. WILLIAMS. I certainly think so. I see great difficulty in determining where you would cut off that line of reasoning once you adopt the basic premise.

VICE CHAIRMAN ABRAM. Couldn't you see, for example, occupations—for example, let me give you this. It's no longer certainly true—a lot of typesetting has gone out of existence. The newspaper field is a field where persons are engaged in various kinds of typing, and it is evenly distributed between males and females. The linotypists make $40,000 a year.

MR. WILLIAMS. Under a comparable worth theory, if they could come up with some scale of values on which their jobs were rated as equivalent, that would follow.

VICE CHAIRMAN ABRAM. So, whenever the market is not producing what is thought to be an equivalent pay result, you could have a claim, based on these same principles, that there should be some kind of government intervention and analysis by experts of what the job is worth and a decree that it be paid that. That's consistent, isn't it?

MR. WILLIAMS. I think that's right. I heard one of the speakers say yesterday that you can get essentially any result you want through job evaluation. So, it seems to me that in any situation where there is an existing pay differential, someone can develop a system that would identify that as discriminatory under that theory.

VICE CHAIRMAN ABRAM. Thank you.

CHAIRMAN PENDLETON. This is not people's court. Commissioner Berry?

COMMISSIONER BERRY. Thank you very much. Mr. Williams—just to make sure I understand your testimony and paper—is it the case that you want to narrowly read the *Gunther* decision, that you want

to limit it to intentional discrimination, that you want to allow the market rate defense that was rejected by the Court in *Corning Glass*, that you want to follow the ruling of the case you discussed, the *Burdine* case, on burdens of proof, and that that, in general, summarizes the legal position you take? Just to make sure I understand; or am I wrong?

MR. WILLIAMS. I'm not sure I'd use the word "narrowly." I would carefully read the *Gunther* opinion. But I think that does accurately summarize where I think the law stands today.

COMMISSIONER BERRY. Could you tell me why you say in your paper that the Court intimates that it might use an intentional discrimination standard? Is that correct? It intimates—you didn't say the Court said that?

MR. WILLIAMS. The Court indicated that if intentional discrimination can be proved—and it wasn't saying how it could be proved—but if intentional discrimination could be proved, that there would certainly be a remedy there.

COMMISSIONER BERRY. But the Court didn't hold that intentional discrimination was the standard to use. Is that correct?

MR. WILLIAMS. What the Court said in *Gunther* was that the plaintiffs in that case were alleging intentional discrimination, and if they could prove it, they would get a remedy.

COMMISSIONER BERRY. But the Court didn't say that one had to prove intentional discrimination. Did it, or didn't it?

MR. WILLIAMS. It did not specifically say that.

COMMISSIONER BERRY. Okay. The other thing is: What are your policy reasons, in general, for feeling that you ought to take the legal position you do, aside from the fact that you have certain clients, which I understand? But in general, if you could just summarize for me in a sentence what your policy reasons are for choosing—and as lawyers know, you can choose one side or the other, at least in most cases—for choosing.

MR. WILLIAMS. I can give you some of them. As far as the question of intent versus the other standard mode of proving discrimination in other Title VII contexts, which is the disparate impact theory, there are several difficulties with attempting to apply the impact analysis to sex-based wage claims where the jobs involved are different. Impact analysis ordinarily is the theory of proof developed to apply in situations where you have a specific employment criterion or practice, such as a selection criterion, a height or weight requirement, a test, that affects groups of people, protected group individuals, differentially. To try to apply that when there is that differential impact, an inference can be drawn in discrimination—

COMMISSIONER BERRY. Mr. Williams—if I may interrupt you—I didn't make my question clear. Now, in the interest of time, I want to try to sharpen it. Because I understand the legal analysis, and I read your paper and I listened to at least part of what you were saying. All I want to know is, in general: What policy objective would you hope to accomplish? What is the overall in terms of women's role in the workplace, men's role in the workplace, the way employers and employees relate? Just in general, what do you think in terms of equity would be accomplished by taking these positions?

MR. WILLIAMS. The overall goal would be to accommodate pay equity within a framework that works and does not seriously disrupt our existing economic system, that is, existing system of values on which we have determined wage rates throughout history in this country.

COMMISSIONER BERRY. Okay. That's what I meant. Now, Mr. Newman, if I can turn to you for a minute. What is the position of the unions, AFL-CIO that is to say, generally, on this issue of pay equity or comparable worth on sex-based wage discrimination?

MR. NEWMAN. The AFL-CIO in 1981 and since then has adopted resolutions calling for the establishment of the end of wage discrimination through collective bargaining, through negotiations, and encouraged the use of all other appropriate measures, including lawsuits, to bring about the end of sex-based wage discrimination. These resolutions in 1981 and 1983 were unanimously adopted by the Executive Council of the AFL-CIO and by the convention of the AFL-CIO and have since been supported by testimony from Secretary Treasurer Donohue and President Lane Kirkland. They have also participated in the *Gunther* decision on the side of the plaintiffs, and they are participating in the *Washington State* decision as a—

COMMISSIONER BERRY. Mr. Newman, why do you want to cause all of the massive economic disruption that would follow this approach that Mr. Williams has just described? He's trying to avoid it by taking the position he's taking. So I understand that since you're on the other side, you want to create massive disruption; you want to have, as my

colleague Mr. Abram characterizes, an entering wedge for human engineering of the wage structure, not just in sex-based discrimination, but the entire economy. Why are you—what is your policy objective in doing this?

MR. NEWMAN. Well, as was said by a witness in the *Washington State* case in your hearing this afternoon, if there were no discrimination, there would be no disruption. If there's a lot of discrimination, there will be a lot of disruption. If getting rid of discrimination disrupts, then that is the policy of the United States and then we must disrupt. I might say, however, that giving somebody, as a result of a market survey, a 25 percent increase is hardly any more disruptive than giving them a 25 percent increase in order to eliminate sex-based wage discrimination. Those people who say they don't want to disrupt are really saying, "We're prepared to perpetuate wage discrimination because we do not want to make this disturbance."

It doesn't really matter anymore what I think. What does matter is that Congress has said and the Supreme Court has said, "We want to end sex-based wage discrimination."

COMMISSIONER BERRY. Do you understand the proponents of pay equity or ending sex-based wage discrimination to be proposing that we establish a system of overall justice, ultimately, which would have some human engineering of the wage structure for the whole country done by the government? Is that what you're—

MR. NEWMAN. Well, I haven't heard any of them advocate that. I have heard it used only as an argument against doing something to end sex-based wage discrimination. But I know of no one who has advocated that we establish a system of pay in this country where everyone gets paid in accordance with their worth. Certainly, the proponents of ending sex-based wage discrimination have not so argued that there be such government interference, and I am surprised that those who oppose the elimination of sex-based wage discrimination would be suggesting that as any possibility. I don't think they seriously mean it.

COMMISSIONER BERRY. Last question.

CHAIRMAN PENDLETON. I thought we heard that in the last discussion.

MR. NEWMAN. But I didn't respond to that point, Mr. Chairman, in the last series of questions.

CHAIRMAN PENDLETON. I thought we heard that this morning and yesterday, that we should be coming—

COMMISSIONER BERRY. But my question was different, Mr. Chairman. My question is not whether you believe the government ought to interfere to enforce pay equity where there is allegedly sex-based wage discrimination. I understand that you'd be supporting that. That's why you're a lawyer and you're litigating these cases. You want the government to do something. But my question was: Does that extend to beyond sex discrimination or sex-based wage discrimination?

MR. NEWMAN. One, we have no law requiring it; two, we have laws governing collective bargaining and we have no need to establish such a criterion. I don't think that's the kind of thing we do in a democracy is establish that criterion. In a democracy we establish minimum standards. We do interfere with business concerns to establish minimum wage laws, and we tell business they can't violate that. We tell business they can't have slavery; we tell business they can't have illegal safety and working conditions; we tell business they must comply with the Walsh-Healy Act and the Davis-Bacon Act. Yes, there are certain minimums. But we have never told the employers that there is a particular market they must use in paying, other than to get rid of illegal practices, wage discrimination and—

COMMISSIONER BERRY. But, Mr. Newman, how are you going to keep what you're doing from being the entering wedge to cause all of this human—

MR. NEWMAN. Well, I just ticked off seven or eight areas where the government has already said we will interfere with the market, and I could tick off many more. The Congress has traditionally exercised the right to get rid of improper, invidious conditions. They clearly said that discrimination is one of those conditions they wish to get rid of. I don't think anyone argues that Title VII, which clearly interferes with the right of an employer to pay people what it wants and to hire those people it wants—no one has advocated getting rid of Title VII that I know of; at least no responsible person advocates getting rid of Title VII.

COMMISSIONER BERRY. So, if we're against ending sex-based wage discrimination according to your theory of it, what we'd be against is Title VII, and we would be asking for the repeal of Title VII, in your view?

MR. NEWMAN. In my opinion, you would have to repeal Title VII in order to perpetuate the kind of sex-based wage discrimination that Mr. Williams and others call comparable worth.

COMMISSIONER BERRY. Okay. Last question for Mr. Williams. You note that the district court in the *Washington State* case did not endorse the so-called comparable worth theory. You say that in your paper and you said it in your talk. But then you go on to discuss the case in terms of it being a comparable worth theory case, and then you pointed out that this consultation was about comparable worth, even though Mr. Newman says sex-based wage discrimination. Are you suggesting that you can call Mr. Tanner's decision in the *Washington State* case whatever you prefer to call it? Is there some reason why you want to call it comparable worth when the court, in fact, said it wasn't?

MR. WILLIAMS. Yes. I think it's somewhat disingenuous to say that the decision is not a comparable worth case, when, in fact, the principal element of proof that the judge relied on was a self-styled "comparable worth" job evaluation study that the State had conducted. I don't disagree in principle that sex-based wage discrimination is prohibited and that to the extent that it's provable, it's illegal and no one is defending that. But we assume the issue, here, when we say that sex-based wage discrimination is proved by inferences drawn from a self-styled comparable worth job evaluation study.

COMMISSIONER BERRY. Would you like comparable worth better if it were called something else, like pay equity, or "good times for all Americans" or something? Is it the name that bothers you?

MR. WILLIAMS. Not at all. It's the reasoning that bothers me. The question that bothers me is: Are we going to establish standards of proof that meet accepted legal standards before we draw inferences of discrimination and go out and solve a problem? In other words, let's know that the problem exists, and let's establish the causation of the problem before we go out and solve it.

COMMISSIONER BERRY. Thank you. Thank you, Mr. Chairman.

CHAIRMAN PENDLETON. Mr. Destro?

COMMISSIONER DESTRO. I would like to start with Mr. Williams. During the course of the last few days, I've heard a lot about what I would boil down to four factors: markets, job evaluations, wage gaps, and sex segregation in jobs. What I'd like you to address, very briefly, is the Supreme Court's view on the use of the market, when it's permissible and when it's not, and relate that to section IV of the Bennett Amendment.

MR. WILLIAMS. My understanding of the law is that market differences based on the sex or the race of the worker are not a legitimate basis for differentials in pay. In other words, if an employer is hiring laborers and finds that he can hire black laborers at a lower rate than he has to pay white laborers, or if an employer is hiring or finds that he can hire women more cheaply than he can hire men, that market factor does not justify a differential in pay. On the other hand, if there are different jobs involved, different occupations subject to different supply and demand factors, then the cases have held that it is legitimate for the employers to take those market factors into account in setting wages. They're not always taken directly into account on a one-to-one ratio. But to the extent that the market in that situation does influence what an employer decides to pay for different jobs, that's a legitimate consideration, and it would qualify as a factor other than sex under the fourth affirmative defense to the Equal Pay Act, which is imported into Title VII via the Bennett Amendment.

COMMISSIONER DESTRO. Okay. Mr. Newman, do you have any disagreement with that? Is that a fairly accurate statement of what the law is, in your judgment?

MR. NEWMAN. No, it's not accurate. For one thing, I think an employer has the obligation to show that it did, in fact, rely on the market; that it did, in fact, do what the market said; and I don't think in many of these cases that that has happened. I think I can best answer you by telling you Washington State does a survey. I think this is one of the better surveys. It looks at certain jobs, 3 percent of the jobs in that case that it determined to look at. If it doesn't like the results, the next year it changes the jobs it looks at. One year it may study a job by doing an in-State comparison and other jobs are out-of-State comparisons. They may change those around from time to time. It seems to me that it's hard to say that there is a market for unskilled jobs, like a correctional officer, by going out of State. You don't hire your people out of State. I don't know the practical value in going out of State to get them and to consider that a market. Moreover, there is the system itself; rather, there are two systems in the State of Washington: One is for higher education and one is for all other classified jobs. For the same

job, based on the same survey, the State winds up paying different rates. Now, how an employer in such a case can rely on the market is hard for me to fathom. One system also provides for geographical differentials while the other does not. They also provide for a statewide rate, and that, in itself, defeats the issue of a market rate, especially when you're talking unskilled jobs.

Now, it may be that highly skilled professionals and others may move from city to city or even from State to State. But it is awfully hard to see how there is a market rate that is different, that's higher for unskilled entry-level job seekers than for women's jobs that are either unskilled or skilled. Can you justify a market rate for a toll collector that's higher than a nurse? Because that's what the market rate theory requires. If a toll collector is getting more than a nurse, then the rates paid for a toll collector—then the work of a toll collector must be justified by a shortage of supply of toll collectors. In this period of high unemployment, it is a little hard to fathom that there is a shortage in supply of unskilled entry-level labor. I think the whole theory of market rates falls flat on its face when you talk about unskilled jobs because there is no justification for paying an unskilled male job more than unskilled female jobs and, indeed, more than skilled female jobs.

COMMISSIONER DESTRO. May I just ask you a question based on the last statement? So then, your theory of the market, as I understand it, would relate solely to the unskilled occupations?

MR. NEWMAN. No. I'm giving that as an example of how an employer who says, "I'm relying on the market to justify my rates," cannot defend that position because there is no shortage. The issue of market rates is supposedly based on supply and demand; that in order to get a particular person to occupy a particular job, you have to pay this rate. Or if you have a whole bunch of unemployment out there at the rate of whatever it is now, and it's about the same for men and women, why is it the unskilled entry-level job for the man gets paid more than the unskilled entry-level job for the females? Why is it that in Westinghouse a female on the assembly line—unskilled entry level, no prior requirements—got paid less than a janitor or a grounds keeper? Those are the kinds of issues I'm talking about. Moreover, let's assume there is a shortage of engineers. Why is it that one finds that all other male-dominated professions, if you want to move up into that area, follow the line of the engineers and are paid on that basis? There isn't a shortage of every professional job so that you can defend every male-dominated job getting more than a librarian. But typically, librarians with a master's get less than any other male-dominated profession with a bachelor's.

COMMISSIONER DESTRO. Sure. That part I understand. I just wanted to get to the question of the legal theory. Let me just see if I can paraphrase, and then I want to get into the actual proof of sex discrimination. I believe I understand exactly how you're construing Title VII. So, I want to get into that a little bit. Would it be accurate to say that, in part, your position is you can't use the market because the market itself has a sex factor in it?

MR. NEWMAN. That's really my second position on the market. The first position is that the Supreme Court, contrary to Mr. Williams, in cases involving all kinds of different jobs in the *Norris* v. *Arizona* case, has said that the fact that all other insurance companies establish insurance rates on a discriminatory basis does not justify the State of Arizona in doing that.

COMMISSIONER DESTRO. Let me just break in. Isn't that another one of the cases? As I read the facts of that case, the companies intended to charge different rates for women in these programs. They had a market justification for it. There's no question about that. But isn't it true that in all those cases there was some proof of intent?

MR. NEWMAN. That's true. But then if you—they had the market justification for it, yes. Let's take a look at the GPO case, if you would, where the Federal Government defended the discriminatory practices of the Government Printing Office on the ground that what they were doing was standard industry practice. The court of appeals in this circuit, in some rather strong language, thought that was hardly a defense, that they were doing what the industry does. If that were a defense, the Westinghouse case is in the same category. Because *every* electrical company did what I just said about Westinghouse, paid unskilled female assemblers less than it paid its grounds keepers.

COMMISSIONER DESTRO. Let's move into the proof problem because this is the area that interests me the most. Let's just assume, so that we're all starting in the same place, a small company, as opposed to a government employer, and the way they set their wage rates is simply by looking around them and seeing what everybody else pays in

whatever community they live in. What you see in the market in the area is a wage gap, and you also see the general reflection of the job segregation. How do you prove a prima facie case of sex discrimination under Title VII and compensation in that kind of a situation?

MR. NEWMAN. Well, I think that virtually every employer that hired women, at least prior to the Civil Rights Act, hired them on a segregated basis. I believe that we can establish willful, intentional segregation and employer participation in the segregation. It was established in *Washington State,* and everybody talks about *Washington State* as if there's nothing more there than a job evaluation. One, the State ran classified ads and it solicited women and ran ads in the women's column for female jobs like a nurse, librarian, secretary, and so on. It ran ads in the male column for—

COMMISSIONER DESTRO. Let me break in there. The nice thing about a hypothetical is that you can throw that kind of stuff out.

MR. NEWMAN. I have to say that that's not all you have. I'm saying that I don't think you would have only that if you investigated it. The problem is that people talk about it as if that's all they have and EEOC gets that case and that's all they brought out. That case is not the one, let's put it this way, that I'd want to bring in court tomorrow. I don't know where it would come out, where the law would develop it. It's not the case one would look for tomorrow.

COMMISSIONER DESTRO. No. That's certainly not the one. That's obviously the hard case. What I want to do is talk a little bit about hard cases. Because what we've been talking about here is the extremes in policies, one being easy cases, and when you talk about equity in the abstract, the other one being hard cases which talk about the collapse of the market economy.

MR. NEWMAN. Forgive me for interrupting. I think it is so important to talk about what exists because there is such blatant wage discrimination out there that nobody is paying attention to. There are easy cases and I think it does disservice—please forgive me for this—but I think it is part of the problem here. It is a disservice to put the emphasis on the case you espouse because, particularly, I think in all cases when you dig, you're going to find something more.

COMMISSIONER DESTRO. I would tend to agree that if more lawyers did their homework—if lawyers for the EEOC did their homework—a little more, they would find more things. I've been involved with cases like that myself. What I'm trying to do is just make clear what everybody is saying. I'm not espousing the position one way or the other. I'm just trying to make the record reflect what it is that people are arguing.

Let's just assume, then, in this business that they use the market. Let's change that a little bit and say that they use the job evaluation system. Could you envision the case where under Title VII you go in and attack the job evaluation system itself for including impermissible factors? I saw in one of the writings—it may well have been yours; I don't recall—the notion of the bona fide job characteristic.

MR. NEWMAN. Well, I think the Supreme Court itself and *Gunther* expressly left room for that kind of attack. I don't think, frankly, it's the easiest kind of case, and in none of the cases that I've been involved in have we attacked the system. Rather, what we've said is, "Employer, this is your system; we don't know whether it's good or bad, but it's the one you've decided to use and, to that extent, you haven't followed it."

We've been careful, up to now at least, not to talk in terms of an employer having to use any particular standard. It's the failure of the employer to follow the standard it used. In *Washington State* again, the chief executive officer, the top personnel people, all agreed that their wage system was discriminatory. They put out statements to that effect. They simply didn't appropriate the money to correct it. But they accepted the findings of that job evaluator.

COMMISSIONER DESTRO. Let's assume that you've made your prima facie case and it's based on a job evaluation like the State of Washington, but you've got a company—and having been involved with companies and litigation, I don't think you're going to find it an easy task of getting somebody in the company to admit that they did anything wrong. What happens if the company defends against the prima facie case on the grounds that the evaluation system that they're being held to does not reflect the company's values and they put up evidence with respect to the value? Does that rebut the prima facie case?

MR. NEWMAN. I think it becomes a tougher case if all you've got is the job evaluation that the employer has not complied with in establishing wage rates. That's not to suggest that *Washington State* would be totally inapposite.

COMMISSIONER DESTRO. I'm not suggesting that.

MR. NEWMAN. What I'm really saying here is that the evidence in these cases is going to show intentional discrimination. I'm suggesting also that where it is established that an employer participated in causing segregation, the effects of that segregation must be remedied. In a sense, Mr. Williams and I are not that far apart. He says that segregation plus intentional discrimination is wrong. What he's not saying, as I understand it, is the effects of the segregation, in terms of the pay people get for the jobs in which they've been segregated, must be corrected.

COMMISSIONER DESTRO. Okay. With respect to the segregation issue, assuming that you can't show intentional segregation—which, again, as far as I'm concerned, the intentional case is the better way—how would you then show, assuming that they made a rebuttal case that it was not intentional, that they used some bona fide characteristics and this evaluation would not reflect the values—would it be possible to show pretext under anything we know now?

MR. NEWMAN. Sure.

COMMISSIONER DESTRO. How?

MR. NEWMAN. Just show it by evidence of discrimination, the evidence being the segregated jobs, the polls they took showing that people don't want to work with women, and the statistical evidence. Nobody seems to think that statistical evidence alone is clearly a way of establishing discrimination. However, the courts have inferred intentional discrimination based on nothing more than statistics.

COMMISSIONER DESTRO. Okay. My point is that, as I read section IV, if you can explain statistics based on anything other than sex, then you may have met your burden as to section IV. In that case, it would seem to me incumbent, under the regular standards of proof in Title VII cases, to go further, although there is somewhat of a question, I think, under the law, as to whether the case ends there under the equal pay standard, or whether one must come back and prove pretext. My question is: In one of those cases where the rebuttal is made—and you don't have all those ready factors that an employer looks for—how do you then prove pretext? Aren't you back to the—

MR. NEWMAN. Well, this is hardly the place to try the lawsuit. But if an employer establishes that there is some reason other than sex, or evidence to that effect, I'm going to look at whether, in fact, when they paid the entry level of males more than they paid the entry level of female unskilled jobs, whether there is any justification for that. If I find that the employer has participated in segregating the job, it would seem that would be a factor other than sex.

COMMISSIONER DESTRO. So then, would that be a place where you would observe a job evaluation system, assuming that you've got this hypothetical—

MR. NEWMAN. Well—

COMMISSIONER DESTRO. —business?

MR. NEWMAN. I don't think you need a job evaluation system to establish evidence of discrimination in wage rates, if you're going to establish that, if wage rates are different and if it results in a discriminatory work pattern. A judge may well order, as I mentioned in my earlier testimony, a judge may find wage discrimination and then say, "I don't know how much it is; I know there's discrimination." He then has broad discretion to determine what the relief should be, and the judge may order a job evaluation in order to guide him in determining what kind of remedial relief to provide. But I do not believe you need a job evaluation in any way, shape, or form in order to establish discrimination. I think *Washington State* would have been the same way without a job evaluation.

COMMISSIONER DESTRO. The very last question I have, and you've already led into it, is: With respect to the difficulty of tracing the cause of each percentage point of wage differential, how do you determine how much discrimination needs to be remedied? Assuming you have a 20 percent gap, how do you find out what percentage of that 20 percent is attributable to discrimination?

MR. NEWMAN. Well, in this case the employer agreed that the 20 percent disparity is due to discrimination and the court so found. I think we're confusing a couple of things when you say how do you establish it as discrimination. We're measuring, now, in job evaluation and not how much discrimination particular individuals may have suffered. What we're measuring is, given where they are today, what is the evaluation of that job with work people are now performing? If you corrected the entire 20 percent discrimination factor in Washington State, women employees would still be making less than the male employees because they don't hold as high positions. That may or may not have resulted from a different kind of discrimination. But it's not part of this issue.

COMMISSIONER DESTRO. Thank you.

CHAIRMAN PENDLETON. Commissioner Ramirez?

COMMISSIONER RAMIREZ. I have a few questions. I'd like to point out that when I was in high school, I was discouraged from becoming a lawyer by my high school counselor. I think that it must have been providence at work with a goal in mind that I would someday sit on this Commission and might be able to look at the forest through the trees or something like that, and that's what I'm trying to do. So bear with me as I try to understand a few things.

First of all, we have had painted over the course of these hearings a picture in which a judge, a government bureaucracy like EEOC, would be given the power, given the principle of comparable worth, to subjectively set the worth of jobs, basically, because the experts couldn't agree and one would have to make a judgment. The problem that I have with that scenario is that there are lawyers in this world and that, in almost every instance as you have here, there is vigorous advocacy for opposing positions both in the bureaucratic procedures and that that's how you act through the courts and that's how you earn your living. What, Mr. Newman, do you think is the likelihood that the legal profession or advocates or the business sector would allow such a situation to occur and that it could occur because our procedures in our lives are too weak; that, in fact, this could get into a situation where setting worth was so subjective and that it would lead to—and based on some kind of human engineering claim?

MR. NEWMAN. You're really hitting upon the central theme of what I've been saying; namely, that if you view this issue in terms of Title VII—and again, I stress nothing about worth, comparable worth or pay equity—in Title VII the issue is discrimination. Whatever men are getting paid should be the wage for similar women's jobs—when I say women, meaning predominantly women's jobs—that is, for work of equal skill, effort, and responsibility. Discrimination should be ended. Nobody is talking about a judge determining what any job is worth. As I said before, some of the male jobs pay $2 an hour or $10 an hour, but that doesn't matter for the purpose of Title VII. Women's jobs have to be raised to the same amount.

I might say, with respect to the whole concept of bureaucracy or whatever, this occurs with respect to any law. Under Title VII right now, even in the example that Mr. Williams gave of segregation being illegal, if an employer took 100 people and 50 of them are women that went to that assembly job in Westinghouse and 50 of them are men who went to forklift jobs or whatever and the court found there was segregation, the remedy for that would be to increase the pay of those segregated women's jobs to the level of the men's jobs if that were established as a current violation. There's really nothing so radical about this. They do that in promotion cases; they require an employer to give somebody the job. Whatever they do to the person that got it in the first place is another matter. But they require the employer to pay out money regularly if the employer discriminates in promotions or any other thing. I mentioned the *Kouba* case of millions of dollars. What was involved there is that Allstate hired people, men and women, and paid them a monthly minimum based on the salary they had before they became employees, that is, with their prior employer. The argument was made that if you use that standard, you're incorporating the discrimination of the marketplace because women traditionally make less, and if you give all employees the same amount or particular amounts above where they were, then you're perpetuating discrimination. Now, that's a tough decision for a court to make. But these decisions are being made all the time.

COMMISSIONER RAMIREZ. But you do not fear that the information that would be presented would be so subjective that a court would accept and—

MR. NEWMAN. I think the burden of proof is on the plaintiff. If the court finds that the evidence is balanced evenly, the court is not going to find for the plaintiff. The proof aspect is clearly there. The plaintiff has to prove the violation, whether you're talking about disparate treatment or whether you're talking about disparate impact. Even under disparate impact they have to establish that the employer can explain it. But I think it's very critical here to recognize that the burden is on the employee to prove that she was discriminatorily treated, the occupants of those jobs were discriminatorily treated.

COMMISSIONER RAMIREZ. We've heard a great deal about voluntary movement in this area and the notion that a voluntary system, both in terms of individual employers and perhaps as policy for the Nation, has much more potential for having good effects. We had, this morning, described to us the system in Minnesota which was implemented on a voluntary basis, and we had some question about

whether Minnesota was different from other States. I live in Texas and let me tell you it is different from my State. Obviously, if such a system were to be implemented in my State—obviously, if such a system were the one in Minnesota—but it seems to me that that is the reason for having safeguards beyond the voluntary measures rather than going forward with an all-voluntary system, because it is unlikely to happen in many places in this country without safeguards. How do you feel about relying on voluntary methods?

MR. NEWMAN. I would certainly want to encourage voluntary methods. I think, however, you could not justify relying on them solely. We did that for a number of years prior to the passage of the Civil Rights Act in 1964. But by that time we learned that people sometimes need a push to do the right thing and to end discrimination. So, we adopted that legislation in 1964. We then had the tool of saying to employers that, "It's not only the right thing to do, but you're breaking the law if you don't do it." I think we need that kind of enforcement machinery. I dare say if that kind of enforcement machinery were not there, at least we can conjecture as to whether Minnesota would have taken the same action. Minnesota knew well, as various advocates of the position made clear, that litigation was contemplated. So, I'm not sure you can really treat it as voluntary. But in any event, certainly we would encourage voluntary action.

COMMISSIONER RAMIREZ. Okay. I do have a few questions for Mr. Williams. I am pleased for the opportunity to ask you some questions because my assumption is that you, having worked with defendants in this case, with employers and with corporations, have had quite a bit of opportunity to get, if you would, into the bowels of the way corporate America makes decisions about wages and employment and everything else. I want to ask you, not in terms of legal proof and not as a lawyer, but from your experience in working with corporations and looking at their systems of employment and their systems of compensation: What is your view on the extent of discriminatory practices—not disparate practices, but discriminatory practices—within those operations vis-a-vis women?

MR. WILLIAMS. It's very hard for me to answer a question that turns on discriminatory practices without answering as a lawyer. But I certainly cannot deny that no discriminatory—or cannot maintain, that no discriminatory practices exist. My overall feeling is that employers, by and large, very much want to maintain equitable pay structures, not only for legal reasons but simply because it just doesn't make good business sense to maintain pay structures that are not perceived as fair and equitable. It leads to labor relations problems. It can lead to the loss of employees with valuable skills that the business depends on. So, without getting into a question-begging analysis about what is equitable, I think certainly the attitude and the desire to be equitable and in that sense, nondiscriminatory is very strong in corporate America.

COMMISSIONER RAMIREZ. Do you think that, as was suggested yesterday, that decisionmakers in corporate America carry with them residual attitudes, if you would, about the way things ought to be or the way things have always been, that, however well-intentioned they may be, do influence the way they make decisions that affect the relative opportunity for women versus men?

MR. WILLIAMS. I'm sure that we all do. I'm sure that people on all sides of these issues do. Whether there is a pattern—I'm really not in a very good position to make a judgment on that—whether there's a predominant pattern of attitudes that affect these kinds of decisions.

COMMISSIONER RAMIREZ. Can you come up with any solution for ending the discrimination that you assume exists to whatever degree that would take less time than the notion that we let it work itself out?

MR. WILLIAMS. First of all, let me say that I'm not as pessimistic as many others may be as to how long it will take discrimination to work itself out. I think that we are at a point in this country where we're beginning to see some very dramatic changes in not only the composition of the work force and the kinds of occupations that women are moving into, but in fundamental attitudes. I see, in young men and women that are entering the work force today, a much different pattern, not only in terms of their employment pattern but in terms of their attitudes. I think there's a great difference. I think certainly there are going to be some lingering effects. But as you have changes in the pattern, there is going to be less crowding of women in the traditional occupations and, therefore, even those who choose to stay in traditional occupations are going to have greater bargaining power. I think there is also a simple fact of heightened awareness of pay equity issues and

changing perceptions about what is equitable, and how equity is best determined.

COMMISSIONER RAMIREZ. One more question and then I'll let you go. Do you believe that those changes and attitudes and practices have been helped by vigorous enforcement where it has occurred?

MR. WILLIAMS. Yes.

CHAIRMAN PENDLETON. Ms. Chavez?

MS. CHAVEZ. Thank you, Mr. Chairman. First of all, I want to apologize to you and to the Commissioners because when the staff worked to put together these panels, we worked very hard to try to get balance and to make sure that each panel was, in fact, balanced with equal numbers of proponents and opponents of comparable worth. And it would seem that this panel is composed of two persons who oppose comparable worth. I just want to make sure I understand Mr. Newman's testimony and his presentation today.

As I understand what you've written and what you just said, you are not in favor of the legislation pending before the Congress and legislation pending in various States which would, in fact, adopt comparable worth language into statutes, because you believe that Title VII is adequate to remedy sex discrimination in the workplace and any differentials of pay based on sex discrimination. Is that correct?

MR. NEWMAN. No.

MS. CHAVEZ. Well, perhaps you can enlighten me, because I am confused after hearing you.

MR. NEWMAN. Title VII provides the legal mechanism for correcting sex-based wage discrimination. Doing studies, having employers do studies, the employers being the Federal Government, the States, or any public or private employers, is consistent with Title VII because those studies will show whether or not that employer has paid discriminatory wage rates. Hopefully, after those studies are completed, the employer would determine that those discriminatory wage rates must be corrected in order to comply with existing law. I have not said that I am opposed to comparable worth. That's an inaccurate statement. What I have said is that I think the law bans sex-based wage discrimination. Frankly, I don't really know what comparable worth means. I never understood when I first heard the term comparable worth as requiring national wage rates, as the employer community now says it does, and things of the sort.

I might add with respect to that, that the real issue here is, as I said before, compliance. If there were going to be a voluntary effort with Title VII, then Westinghouse in the plants that were not sued, in the 28 or so that were not sued, would have instigated the same corrective changes as it did in the 6 plants where it was sued and where those changes occurred.

MS. CHAVEZ. If you don't understand the term comparable worth, could I infer that you would oppose legislation that used this term?

MR. NEWMAN. I don't care about the term. I'm concerned with what the legislation says substantively.

MS. CHAVEZ. Do you believe that Title VII and the Equal Pay Act are adequate to remedy sex discrimination?

MR. NEWMAN. Do I believe Title VII and the Equal Pay Act—

MS. CHAVEZ. Right—are adequate remedies for sex discrimination in the workplace?

MR. NEWMAN. For sex-based wage discrimination, I believe those two pieces of legislation are adequate if they were enforced. I think, however, that it's not inconsistent when I say they are proper laws to also say it would be great if individual States passed similar laws and enforced them, because we don't have enough enforcement of those laws. What my criticism is, is that EEOC has not enforced the law since 1981, that OFCCP has not enforced it, that the Justice Department is not enforcing the law, and that they are reversing the positions of those departments prior to 1981.

MS. CHAVEZ. In 1963 when the Congress passed the Equal Pay Act, they eschewed the concept of comparable worth and, in fact, dropped language which would have incorporated that—

MR. NEWMAN. Right, in 1963.

MS. CHAVEZ. Do you believe, at that point in 1963, this would be a correct interpretation? Do you believe the law, as it is written now, is adequate to remedy the disparities that we've heard about for the last 2 days?

MR. NEWMAN. Ms. Chavez, I would hardly substitute my judgment for that of the Supreme Court. The Supreme Court has said that the Equal Pay Act covers substantially equal jobs. It has said that job evaluation is a defense to the claim under that law. It has also said that you may use such evidence of job evaluations in Title VII sex-based wage discrimination cases. That now is the law.

That's what the Supreme Court has determined was intended. And I think it serves no useful purpose to argue that further because that was the argument that was presented in the *Gunther* case. Mr. Williams' forces argued that the Title VII meant no more than equal pay for equal work. We argued otherwise; Justice argued otherwise; EEOC argued otherwise. The Supreme Court happened to agree with us in an overwhelming vote of five to four. That's where it is.

Ms. CHAVEZ. I'm not arguing the merits of that interpretation. I'm simply trying to understand. At the beginning you said you believed that we ought to be focusing on enforcement of current law in this hearing as opposed to discussing the concept of comparable worth. Part of the impetus for this consultation is that there are pending pieces of legislation in various States and also before the United States Congress. These laws would, in fact, substantially enlarge the understanding and interpretation of Title VII.

MR. NEWMAN. I'm afraid I disagree. What law do you have in mind that would enlarge the interpretation of Title VII?

Ms. CHAVEZ. There are bills that use the term comparable worth.

MR. NEWMAN. But in substance, they don't enlarge it.

Ms. CHAVEZ. So, you don't believe that those bills are necessary. They're simply unnecessary because, as you understand Title VII, it already incorporates this process.

MR. NEWMAN. No. What I said earlier, I think, is that doing a study, which is what the Evans bill requires and the Snow bill requires, is consistent with Title VII because that study would show whether or not the Federal Government discriminates in the pay it gives employees. The Oakar bill requires a similar study and would go towards eliminating discrimination which, as I said before, in the case of GPO and several other Federal cases, the courts of appeals have found that the Federal Government does discriminate. So, there's a reason for the Federal Government to look at itself. To that extent, it should not be thought of as new law. They are not new laws. The shorter resolution calls for condemnation of enforcement agencies for not enforcing existing laws. I don't know of any pending legislation which seeks to change substantively Title VII. I believe such a change is not necessary.

Ms. CHAVEZ. Thank you.

CHAIRMAN PENDLETON. In that connection, would you please resolve for me—you made a statement earlier in your testimony or in your presentation, I'm sorry—that comparable worth has no legal basis. Based on what you just said, can you help me to understand what you mean by no legal basis?

MR. NEWMAN. I mean there's nothing—to have a legal basis, we have to have a statutory thing to pin it on. I see nothing in Title VII that says failure to pay comparable worth is illegal. I see nothing in Title VII that says failure to pay equity is illegal. I do see things in Title VII that say, flat out, that discrimination in compensation is illegal based on sex or race, and there's no question about that illegality. I might say that the EEOC has so held since 1966 in a race case and has since so held in sex cases. They've held that under Title VII, EEOC clearly has no jurisdiction to go beyond Title VII, and I'm not suggesting for a moment that it does.

CHAIRMAN PENDLETON. We have a couple brief questions from the General Counsel.

MR. DISLER. I have a couple questions for Mr. Newman, but I think I'd like Mr. Williams' comments on the questions as well.

Mr. Newman, I had a couple of questions about some of the things you said in your paper. The first one is where you say, "Disparities in pay between male and female workers, like disparities between blacks and whites, which are based on the sex or race of job occupants and not on the jobs themselves are—plainly and simply—unlawful." And you make a statement that Title VII doesn't require a comparing of jobs.

My question is: What do you mean by the phrase "not based on the jobs themselves"? Are you talking about job content?

MR. NEWMAN. Yes. I'm saying if the job content justifies a wage differential, there would be no wage discrimination case. For example, let's assume that the employer deliberately, by segregation, assigned women to jobs that were lesser skilled than those of the jobs assigned to the male employees. That might be discriminatory and would be a violation of the act insofar as the segregation is concerned. But if, in fact, the pay differential was justified on the basis of skill, effort, and responsibility, that would not constitute wage discrimination as such.

MR. DISLER. Aside from a case of intentionally putting people into different jobs on the basis of sex, I understand you are saying—as I heard a moment

age, I think in answer to Commissioner Ramirez—that you're saying that women, at least in predominantly female jobs, should be paid the same as men in predominantly male jobs when there is comparable or equal skill and effort once that is determined. Is that an accurate statement of what you said? That's a question for you.

MR. NEWMAN. For me?

MR. DISLER. Yes. You were suggesting, I thought, in an answer earlier, that women in predominantly female jobs should be paid the same as men in predominantly male jobs when the jobs are of comparable skill value, effort, and that kind of thing. Now my question, after this long introduction, is: Aren't you turning Title VII on its head in that statement? I can agree with half of that statement that Title VII prohibits the basing of wages on sex and race. But Title VII is prohibitory. It doesn't tell you what to base wages on, and you're saying that if they don't base it on the jobs themselves—whatever that means, and you seem to say that's job content—it's a violation of Title VII. Is that what you're saying?

MR. NEWMAN. I'm saying that you have to apply the word of prohibition of discrimination in compensation, and you have to set up a standard by which you measure discrimination in compensation. The act contains no specific standard for this anymore than it contains standards as to how you show a promotion discrimination case. That's case law, court law. And that, to the extent you can show that women are being discriminated against in compensation, is a violation of law. Now, one way to show it, in my judgment, is to show that there is a pattern that all male jobs, as you go up in skill and effort, get paid more, but the female jobs all get paid less than the male jobs. What you have in American industry, and in the government as well, is that the employers do, in fact, increase the pay of jobs as the skill, effort, and responsibility go up. That's standard. But the problem is that they increase it on a two-track system, with men's jobs going up as skill goes up, women's jobs going up as the skill goes up, but always with the women's jobs being below the men's with an equivalent number of points, and that's the discrimination aspect that we're talking about. Whether that pattern is sufficient to show discrimination or not is a matter for a court to determine based on the available evidence.

MR. DISLER. I appreciate that clarification.

Did you have a comment, Mr. Williams?

MR. WILLIAMS. Well, with respect to the statement that you asked about, I would certainly agree with Mr. Newman to the extent that there is no violation if the differential in pay is based on job content. But I think the problem with the statement is that it doesn't go far enough. There also may be no violation found if the differential is based on any other nonsex factor. It need not be job content. It could be a difference in seniority, a merit factor, a quantity or quality factor, or any other factor other than sex. The term in the statute was put there to allow for basically any factor that is not sex related, or race related. It need not necessarily be a job content factor.

MR. NEWMAN. What we're really disagreeing on is how you measure discrimination. We don't disagree if it's clearly a seniority explanation, or quality or quantity of production explanation, merit, or any other factor other than sex. We all agree. That's clear. That's case law. The question is: How do you apply those terms? And that's for a court to determine in each case based on the evidence.

MR. DISLER. Okay. I have two more questions. One regarding another statement here in your paper, Mr. Newman. In several places you were talking about employers or others who rely on the market factors and that the market is no defense to sex discrimination. Putting aside the merits of arguments that use the market's supply and demand in this context, however they're used; I don't want to address the merits. I want to try to understand what it is employers, for example, might be saying about the market in this context, because I'm not persuaded you have accurately described their position. I may be misunderstanding it. But I'm not persuaded that the way you have set it out here is the way that they would put it, whatever the merits of their argument may be. Let me quote you the piece of it that concerns me.

You say that, "Few would publicly suggest that Title VII permits an employer to exploit black workers by paying them lower wage rates than whites simply because the black unemployment rate is so tragically high and the supply of blacks is so much greater than demand. Why then should the same 'market' argument—oversupply of women for 'women's' jobs—be a defense to sex discrimination?"

Now to me, that assumes, as I understand the market argument, the answer to a very important question. Isn't the market argument not that the oversupply of blacks, for example, would justify a

different wage for blacks than for whites, especially, for example, in the same job, but that looking at two different jobs, supply and demand for each job is an explanation. Whether the argument is persuasive or not is something else, but it is an explanation for why there is a pay gap. I mean, it goes to the question as to whether there is discrimination. Am I describing the market argument accurately?

MR. NEWMAN. Let me try to comment on that. What I'm attempting to say is that employers say the reason, at least one reason that—tied in with the market argument—that women get paid less is because there's overcrowding in the kinds of work women do, where lots of women are available for that work and, therefore, the rate goes down. I'm suggesting that there is a solid analogy between that argument and saying that there are lots of black people, that the great unemployment, it's greater than that of whites, we, therefore, can get blacks cheaper than we can get whites and let's pay them less. I don't see much difference, any difference, in those two arguments. I simply don't think that, publicly, people would espouse the argument that we should hire blacks for less. They do espouse the argument that we should hire women for less because they are overcrowded and in greater supply.

MR. DISLER. Okay. I appreciate that gloss on that. Not all of that is clear to me from reading that paragraph. I was wondering if Mr. Williams had a comment on that.

MR. WILLIAMS. Well, I do see a difference between the two arguments. If we're talking, in the situation regarding blacks, about similar jobs or the same job, certainly Mr. Newman is correct. No one would justify paying less for the same job simply because—paying black people less for the same job than you would pay white people—simply because there may, in some instances be more black people available to do the work. But I think to try and translate that reasoning over to a situation where different jobs are involved and you're following a market differential based on the difference in the jobs, regardless if there be an oversupply of one sex or the other in either job, I think that reasoning simply doesn't wash. You're ignoring the—the fundamental difference is that there are different jobs involved.

MR. NEWMAN. May I comment on that? What I'm talking about is the fact that there are predominantly women's jobs, and employers justify hiring women for those jobs and paying them less because there's a big market out there. It's a job that is predominantly female. The analogy I'm drawing is that if you had a predominantly black job that is different from the white jobs, you have the same issue and no employer would publicly say, "Title VII permits me to hire blacks for that predominantly black job and pay them less than the job is worth because there are no whites working in the same job because they are in different jobs."

MR. DISLER. But wouldn't it permit the employer to say because of the supply and demand for two different jobs, I mean, you're adding—

MR. NEWMAN. Well, I don't think an employer could say there's a greater supply of blacks and—

MR. DISLER. I agree with that. Even in predominantly female jobs or predominantly one-race jobs, I mean, you do have some mix of people in there. You're adding, of course, the description in your hypothetical which yields your results.

MR. NEWMAN. I'm saying there are things known as women's jobs, but we don't admit to the fact that black jobs exist. But if you relate this whole issue to unskilled entry-level jobs, there is no market for toll collectors. As long as you have a pool of toll collectors out there or a pool of assembly workers or a pool of janitors, you have a pool of people who want a job and the women want a job and the men want a job, and if the women wind up in lower paid jobs than the men, I submit that one can infer discrimination.

Let me just add this. One of the more telling pieces of evidence in *Washington State,* I thought, was that we looked at jobs that the State required nothing more than high school for, and we then took the 40 or so classifications we found which were predominantly women and which were predominantly men, and we found that predominantly women's jobs were getting paid 18 percent or 20 percent less than the predominantly men's jobs where the State had established the identical entry-level standard. Now these were unskilled jobs that any of them could do. We found the same thing if we looked at jobs that didn't require high school. There clearly was a pool of people out there to do it, but then you could hardly say there was an oversupply of women versus men when the jobs could have been performed by either.

COMMISSIONER DESTRO. Does anybody else have any questions? If not, I think we should adjourn for lunch—until 2:15, and we'll come back in this room.

Thank you Mr. Newman and Mr. Williams for your very interesting presentations.

[Recess.]

PANEL: COMPARABLE WORTH AS A REMEDY FOR SEX DISCRIMINATION

VICE CHAIRMAN ABRAM. Our final panel of this consultation will be examining the viability of comparable worth for eliminating sex discrimination in employment. The panel will also consider the economic and regulatory costs and benefits of implementing comparable worth and whether any alternative remedies exist. Discussing these issues will be Dr. June O'Neill, program director of the Urban Institute program in policy research; Secretary Ray Marshall, former Secretary of Labor, current professor of economics and public affairs at the University of Texas at Austin; Dr. Jeremy Rabkin, assistant professor of government, Cornell University; and Ms. Joy Ann Grune, lecturer and writer on the issue of comparable worth. Ms. Grune was a founding member of the National Committee on Pay Equity and served, until recently, as the executive director of that organization. It should be noted that the agenda does not look like Ms. Grune is no longer affiliated with the National Committee on Pay Equity, and we apologize for the oversight.

Ms. Grune, would you proceed. Thank you for being with us.

Statement of Joy Ann Grune, Former Executive Director, National Committee on Pay Equity

MS. GRUNE. Thank you very much.

The essential point in the paper I prepared is that there are workplaces in which wages for job classifications are low because of the sex of the majority of occupants and that this type of wage discrimination must be eliminated, directly eliminated. Equal pay for equal work, the elimination of discrimination in hiring and promotion, and affirmative action are important policies. But they complement pay equity; they do not substitute for it. Many of the arguments used against equal pay for work of comparable value are built on shaky assumptions which exaggerate the extent to which employers respond directly and uniformly to market forces. These arguments also exaggerate the degree to which pay equity challenges the market economy.

As for costs, even though we've heard estimates in the trillions of dollars for what it will cost to achieve pay equity, these estimates are not sound. Workplace by workplace estimates are just becoming available as employers complete job evaluation studies and actually begin implementing. If employers voluntarily take action, they can contain costs in important ways. As far as government involvement goes, State and local governments have surged ahead over the last 3 to 4 years where the Federal Government has failed to fully enforce the 1964 Civil Rights Act. This is particularly bad because, somewhat paradoxically, strict Federal enforcement is the primary factor to encourage voluntary compliance.

In my 15 to 20 minutes I will summarize my paper section by section.

Section number one: Pay equity is a necessary remedy for wage discrimination. Although there is often a great deal of confusion associated with the concept of pay equity, the principle is straightforward and direct. Pay equity requires the elimination of the type of discrimination through which wages for entire occupations have been depressed because an overwhelming number of occupants are female. I'm sure that most people can agree that there have been, and probably still are, situations in which men and women are doing the same work; and people can agree that there are workplaces in this country where certain occupations are paid less because it is mostly women doing the work. Likewise, I'm sure that most people can admit to the theoretical and empirical probability that, in many situations, these occupations are paid less because the work is done by women.

Pay equity is uniquely suited to reach deeply rooted patterns of structural inequality in which wages for entire occupations have been reduced because women are doing the work. It is a direct and deliberate challenge to wage discrimination which reaches into the workplace and puts its finger directly on discrimination. Pay equity does not rely on laissez faire approaches such as the market, or indirect approaches such as affirmative action, which historically have shown themselves to be inadequate to the task of reducing wage discrimination and the wage gap. I want to stress, as others have said, that pay equity advocates believe that the 1964 Civil Rights Act reaches wage discrimination which occurs among jobs which are comparable but not equal. This was confirmed by the Supreme Court in *Gunther* v. *Washington.* As Winn Newman indicated, this 1981 Court decision was an extremely important one for pay equity because, up until that time, the main argument against equal pay for work

of comparable value was a legal one—that the Civil Rights Act was no broader than the Equal Pay Act in its applicability to wage discrimination. Fortunately, the Supreme Court decided in our favor in this case.

The objective of pay equity is to raise wages for predominantly female jobs to match wages for equally valued male jobs. The majority of pay equity initiatives now taking place across the country are efforts to eliminate sex-based wage discrimination. However, in those firms or those workplaces where job segregation and wage depression are associated with race or ethnicity, the principle of pay equity can also be applied. So, for example, yesterday Ronnie Steinberg described the large, and I think the most expensive, study to date now going on in New York State—the $500,000 evaluation study. Because of the patterns of wage depression and employment in New York, they are looking at race as well as sex in their job evaluation study.

Section number two: Equal pay for equal work and the elimination of discrimination in hiring and promotion are not substitutes for pay equity. Equal pay for equal work, pay equity, and the elimination of discrimination in hiring and promotion are all required by law. They are comparable but distinct approaches to related but different problems in the workplace. The Equal Pay Act passed by Congress in 1963 mandates equal pay for equal work performed by men and women. Although extremely important, this law is limited because it is not able to reach the type of discrimination experienced by most women, that is, discrimination which involves comparable, not equal, jobs. Many people believe that there are still situations in which men and women doing equal work are not receiving equal pay and that much stronger enforcement and initiative is necessary in order to reach this type of discrimination. However, even stronger enforcement of the EPA will not address the type of discrimination being experienced by most American women today.

Now, in this section of the paper, I reviewed many facts and figures on patterns of occupational segregation. I'm not going to go through them now, because they were well reviewed yesterday by several panelists. I do want to call to your attention, however, a fact sheet which is in one of your briefing books. It's called "Women of Color and Pay Equity" and was done by the National Committee on Pay Equity and the National Institute for Women of Color. Basically, this publication concludes that women of all racial and ethnic groups are converging in their earnings and in the types of jobs they hold. However, there are still differences. Number one, women of color still make less. Number two, it appears that women of color experience slightly greater degrees of occupational segregation than do white women. Women of all racial and ethnic backgrounds are victimized by structural discrimination which goes beyond equal pay for equal work.

In terms of pay equity policy, the point at which we must pay particular attention to variations among women is when we target employers, industries, and occupations for purposes of eliminating discrimination. They must be selected in such a way that the problems of all types of women are reached.

There are many reasons why the elimination of discrimination in hiring and promotion and affirmative action are not substitutes for pay equity. I want to group my comments here into three different sections.

Number one, the law requires the elimination of wage discrimination whether the jobs involved are equal or whether the jobs are comparable. The existence of affirmative action programs in a workplace is great; it does not transform an illegal act of wage discrimination into a legal one. Likewise, I've heard mention of the personal motivations that drive women to enter the work force. A woman's personal reasons for taking a job or staying in a job, once again, do not transform an illegal act of wage discrimination into a legal one.

Finally, if an employer is attempting to eliminate discrimination in hiring and promotion in this part of his work force, that's fantastic. But it is not a license to discriminate over here against jobs which are held predominantly by women or minorities.

Some people have suggested using affirmative action and job integration as a direct means to reduce the wage gap. Job integration and affirmative action are important policies, but they're not feasible as direct policies for the reduction of the wage gap. This is because, one, it has been estimated that roughly two-thirds of men and women would have to change jobs if we were to achieve equality of occupational distribution. That would take a very long time. I think, in one of the papers, the estimate was 75 to 100 years.

Number two, this approach calls on women to give up years of experience and training. Some women may want to leave their jobs; many may not.

But this approach makes little sense as an employment policy, because it depends on millions of skilled women deserting the service sector infrastructure of the American economy to take other jobs.

Number three, this approach presents the problem of attracting and retaining men in predominantly female jobs.

Finally, the service sector of the economy, where many women are employed, has quite a few of the expanding occupations. To expect that we can take women from these and assign them to predominantly male jobs which are often shrinking and experiencing high unemployment rates is unrealistic.

Now somewhat paradoxically, if our goal is to achieve job integration, I think one of the most successful ways of doing this is to implement equal pay for work of comparable value. I say this for four reasons. (1) This issue empowers women and will encourage new women to enter new jobs. (2) There's going to be much less of an incentive for employers to maintain sex-segregated jobs once pay equity is implemented. (3) Affirmative action will be used by employers to integrate jobs so as to avoid being held legally and financially responsible for wage discrimination. (4) Finally, higher wages in predominantly female jobs will attract men.

Section number three: the failure of market arguments against pay equity. In this section of the paper, I discuss five fallacies concerning pay equity in the market. Rather than go through all of them, I have pulled out three points that I would like to emphasize.

Point number one: It is sometimes thought that pay equity represents an internal wage structure which is different from and stands against an external or market-based wage structure. This polarized view of alternatives for wage setting leaves the impression that pay equity requires the destruction of reliance on the market in wage determination. This point of view is inaccurate. Pay equity requires only the elimination of bias in the wage-setting process. Bias has many sources, some of which we know about and some of which we are learning about as we do more case studies of the wage-setting process. Bias may operate through market rates. It may operate through the ways in which employers choose to respond to and rely on the market. Bias also can operate through job evaluation systems and through the types of subjective judgments that employers make, such as in the *IUE* v. *Westinghouse* case that Winn Newman referred to in his testimony.

It is virtually impossible for employers in this country in 1984 to set wages outside of a market economy. Pay equity activists have not asked employers to do so. Instead, what activists have usually asked is that the predominantly male jobs have their wages derived from prevailing wage rates and then that predominantly female jobs be based on equally valued male jobs. The connection to the market occurs through the predominantly male jobs.

The second point concerning the market is that employers have great latitude in how they respond to or rely on market forces and that this latitude is too often exercised to the disadvantage of people in predominantly female jobs. I want to give three examples here.

In terms of supply and demand, an employer has many choices as to how to respond to a shortage of workers. His choices, let's say relative to nurses, include temporarily absorbing the shortage, hiring temporary nurses, having the nurses who are employed work overtime, redesigning the workload, changing recruitment techniques, or possibly raising wages. Pay equity advocates fear that the last choice, raising wages, is less likely to be used. They also fear that wages will be raised to a smaller amount.

The second example I want to give here concerns latitude and discretion in responding to market forces. Clerical—

VICE CHAIRMAN ABRAM. Ms. Grune, could you go into conclusion?

MS. GRUNE. I'll try my best.

VICE CHAIRMAN ABRAM. We have a very long agenda and your time is about to expire.

MS. GRUNE. Okay, thank you. Clerical workers have complained that their employer surveys lower paying firms in a smaller geographical area when wages are being set for predominantly female and minority jobs. There are other examples here which I will bypass at this point.

In terms of cost, the major point I'd like to make is, given that wage discrimination is illegal and must be eliminated, the single most important thing an employer can do to contain cost is to voluntarily comply. Voluntary compliance is basically a two-step process. Step number one is doing a pay equity job evaluation study; step two is putting together an implementation program.

In terms of the role of government in eliminating wage discrimination, I've worked with people in many cities and States across the country, and

generally they feel quite accomplished relative to the progress they're making with collective bargaining, with organizing, and with State and local legislation. But they are overwhelmingly pessimistic and discouraged when it comes to the Federal Government. They feel they cannot rely on the Equal Employment Opportunity Commission to enforce the Civil Rights Act.

In conclusion, I believe that pay equity or equal pay for work of comparable value is one of the most democratic women's issues to arise in the last 15 years. It is an issue that promises to help the many, not the few, and also the needy more than the privileged. I think that even without more vigorous enforcement efforts on the part of the EEOC, this issue will continue to move, primarily because of the deep appeal, fantastic appeal, it has to working women and their supporters. But things would certainly happen a lot easier and a lot less expensively if we could count on the cooperation of the Federal Government in this regard. Thank you.

VICE CHAIRMAN ABRAM. Thank you. I'll turn the meeting over to the Chairman.

CHAIRMAN PENDLETON. Thank you very much. Thank you, Mr. Abram, for filling in for me.

Dr. O'Neill, I guess you're next.

Statement of June O'Neill, Urban Institute, Washington, D.C.

DR. O'NEILL. The traditional goal of the feminist, at least as I understand it, has been equal opportunity for women, and that is the opportunity for women to gain access to schools, training, and jobs they choose to enter and on the same basis as men. This goal, however, basically accepts the rules of the game as they operate in a market economy. In fact, the thrust has been to improve the way the market functions by removing discriminatory barriers that restrict the supply of workers to jobs.

By contrast, the recent policy of comparable worth would dispense with the rules of the game. In place of the goal of equality of opportunity, it would substitute a demand for equality of results, and it would do this essentially through regulation and legislation. In fact, after thinking about it, you wonder why one would bother to go through all these elaborate schemes and why not simply say all women should be paid the same as all men—and why even stop there? Because, in a sense, when you start thinking along these lines, you have to question why some women earn a great deal more than other women and why some men earn a great deal more than other men if they're each putting forth their maximum amount of effort in working according to their highest ability. I think, therefore, comparable worth is a radical departure from the economic system we have and so should be scrutinized with great care.

The main points I will make are as follows: One, the concept of comparable worth rests on a misunderstanding of the role of wages and prices in our economy; two, the premises on which a comparable worth policy are based reflect confusion about the reasons why women and men are in different occupations and have different earnings. Both the occupational differences and the pay gap, to a large extent, are the result of differences in the roles of women and men in the family and the effect these role differences have on the accumulation of skills and other job choices that affect pay. Discrimination by employers may account for some of the occupational differences. But it does not, as comparable worth advocates claim, lower wages directly in women's occupations. Three, comparable worth, if implemented, would lead to capricious wage differentials resulting in unintended shortages and surpluses of workers in different occupations with accompanying unemployment; moreover, it would encourage women to remain in traditional occupations. Four, policies are available that can be better targeted than comparable worth on any existing discriminatory or other barriers.

First, the concept of comparable worth. By comparable worth—the definition that I am working with is the view that employers should base compensation on the inherent value of the job rather than on strictly market considerations. In the free market, wages and prices are not taken as judgments of the inherent value of the work, of the worker, or of the goods, but reflect the balancing of what people are willing to pay for the services of these goods with how much it would cost to supply them. Market prices are the efficient signals that balance supply and demand. Thus, in product markets we do not require that nutrition dictate differences in price, for example, between soybeans and chocolates, or that the price of water be higher than the price of diamonds because it is so much more important to us. If I asked what the proper scale of prices should be for these products, I think most people would give a sensible answer, that there is no proper scale—it all depends. It depends on taste, the needs

of millions of consumers, and various conditions that determine the cost of production and the price of these products.

What is true of the product market is also true of the labor market. There is simply no independent, scientific way to determine what pay should be in a particular occupation without recourse to the market. Job skills have costs of production, such as formal schooling and on-the-job training. Different jobs have different amenities that may be more or less costly for the employer to provide, such as part-time work, safe work, flexible hours, or a pleasant ambience. And individuals vary in their talents and taste for acquiring skills and performing these different tasks. The skills required are constantly changing as the demand for products changes and as different techniques of production are introduced. Ten years ago, the demand for computer program operators was just not like it is today. The world is different. These changes can also vary by geographic region. In a market system, changing conditions are reflected in changing wage rates, which, in turn, provide workers with the incentive to acquire new skills or to migrate to different regions.

The wage pattern, that is, the net outcome of these forces, need not conform to anyone's independent judgment based on preconceived notions of comparability or of desirability. Some examples, I think, will help to indicate how really difficult it is to make those judgments. Take a college faculty that has a physics professor and an English professor. They both may have the same number of degrees; they both may have put in the same amount of work; they both may have the same publications—that is, the same number of publications and in the same quality journals. Should they be paid the same? Well, if they were paid the same, what would happen? The demand for physics teachers is different than that for English teachers. Presently, the pay for physics teachers is much higher than it is for English teachers, the reason being that physics teachers have demand in more parts of the economy than English teachers and physics also is an area that fewer people go into. It also so happens that physics is an area that has relatively more men than English. So, the question could be raised whether it is biases against women that result in pay differentials between the fields. It's very difficult to look at two occupations and decide what is comparable to what, what should be more highly rewarded than what.

Another example, attributed to Sharon Smith, refers to English-French language translators compared with English-Spanish language translators. These two occupations might seem, at first impression, identical. But when you think about it: Are they identical? The demand for Spanish language translators may be different for business reasons. There may be a wider demand. That would lead you to believe that maybe Spanish language translators should be paid more. On the other hand, more people may speak Spanish and be able to translate from one language to the other. So the supply may be greater. You can't tell just by considering these factors which occupations should be paid more and by how much. There isn't any kind of computer that can figure this out. This is the kind of process that goes on through trial and error in markets where wages are determined. Sometimes there are market imperfections. In a market system they're more readily rectified. Unions, for example, may raise wages above the natural market wage—the wage that would balance supply and demand. There are also minimum wages. However, comparable worth does not address the problems caused by market imperfections.

Why abandon the market? The argument for abandoning market determination of wages and substituting comparable worth, or going to some mix of market and comparable worth, is motivated by the pay gap. I won't say much about the pay gap because I'm sure you have already heard a great deal. The only thing that I will mention is that the male-female pay differential is not 59 cents out of every dollar. That statistic is based on the comparison of annual earnings of women and men and is not adjusted for differences in the hours worked by women. If you look at 1983—using what is a more appropriate statistic, the ratio of hourly earnings of women to men, as reported by the Bureau of Labor Statistics—in 1983 it is 72 percent. Among groups under the age of 35, the ratios are considerably higher. For people from 29 to 24, the female-male earnings ratio is 89 percent. For people 25 to 34, it's 80 percent.

The differential has narrowed considerably. Since 1979 there has been a little change. Before that, differentials had remained constant for a long time. There are reasons for this. A lot of it had to do with education. I don't know whether it's commonly known, but in the 1950s women who were in the labor market had more education than men; they

were a more select group comparable to the average woman. As more women entered the labor force, the relative education of women to men fell. This was a factor that would have widened the wage differential.

Speakers this morning must have gone into the reasons for the pay gap, citing studies that have tried to explain what accounts for the differential between women and men. One must rely on explanatory factors that one can measure in doing such studies. I think that one finds that major differences are accounted for by differences in the amount of work or the quality of work experience that women and men have. However, expectations are also important. Among women in the labor force today, many of them had not planned to be working. As things turned out, the world changed and, as mature women, they did enter the labor force. Preparations that women have made—this is looking at women over 40—are not the same as the preparation of men. So, it's more than just a differential in years worked—although the differential in years worked is large and accounts for much of the differential—but it also has to do with the kinds of investments related to work that were made along the way.

Another factor that is important is that even among women who worked continuously, many women who are in that situation really have two jobs. They have a job in their homes and they have a job in the market. Their job in the market is tailored to fit in with home responsibilities. Under those circumstances, women are limited in the kinds of choices that they can make, and it restricts the hours, the kinds of jobs, and the geographic location of jobs. These factors, I think, lead both to differences in occupations that women enter and to differences in earnings. That doesn't mean that there isn't any discrimination. Among the studies that have been done, there's a wide array of findings, depending on who's doing the study and what kind of data they have used. The differentials that remain unexplained also vary. But what is unexplained is what you don't know about. It isn't necessarily discrimination. It may be; it may not be. But what you can't measure should be called a measure of ignorance. It's not necessarily a measure of discrimination.

I'd like to jump to a central contention of comparable worth supporters. Among the various reasons cited as to why comparable worth is needed, the one that's most difficult to follow is that the pay in women's occupations is lower simply because employers wish them to be lower and systematically downgrade them. This argument is different from the idea that pay in women's occupations is depressed because of an oversupply to women's occupations. An oversupply to women's occupations could arise because large numbers of women entering the labor force have been choosing these occupations, and I think that there is some truth to that. That has, in fact, happened. It's not true of younger women, incidentally. Younger women are entering a different array of occupations than older women. For a period of time during the late 1950s and 1960s, there certainly were situations where women entering particular occupations must have put downwards pressure on wages in those occupations. That would be a nondiscriminatory reason for oversupply.

Oversupply can also result from discriminatory factors. That is, if women are barred from entering some occupations and are forced into certain others—into a small array of occupations—that would also constitute an oversupply, and that would be a discriminatory situation. However, that doesn't have anything to do with comparable worth. Comparable worth would be counter to helping that situation. To remedy the situation would involve making sure that the barriers don't exist.

However, comparable worth advocates have recently taken the view that overcrowding is not the major reason. The major reason is that employers simply pay less because they want to. They downgrade the value of the occupation. How, though, would they implement this? There are thousands and thousands of firms. Suppose some employers did, in fact, have that view; they just looked down on women's occupations because women did them and decided not to pay very much for those occupations. Those occupations would become a bargain, and all it would take is for some employers to come into the market and the product that used those occupations could be produced much more cheaply than other products and services. So, you would find that gradually, as long as a component of employers does not share the view that these occupations should be paid less, there are mechanisms, very powerful mechanisms, that make it difficult for the employers that have this peculiar bias to stay in business. I don't believe that discrimination easily arises against an occupation as such; I don't really see and I've never seen it demonstrated that such a thing could occur.

The only way it could ever arise would be through collusion. Although, theoretically there could be collusion in some markets, it's certainly not true of the main situation in the United States.

In a study that I did, I asked the question: To what extent you could perform an experiment and say—and I've done this in a study—to what account do measurable factors, such as differences in schooling and other things, explain differences in wages going across occupations? Is there a discount for an occupation being predominantly female? In an analysis of data on more than 300 occupations, I found that after adjusting for schooling, training, part-time work, and a few environmental conditions, the proportion of females in an occupation was still associated with lower pay. But the amount was really fairly trivial. For each 10 percentage point increase in the percent female in an occupation, the wage in the occupation was lower by 1.5 percent. However, in this study I did not have data on the work experience for women in the occupations compared to men, nor did I have really any way of measuring all of the amenities of the occupations. So, again, one is left with a question mark: Is there some sort of mechanism that is systematically resulting in lower pay? However, as I noted, there was very little left to explain, since the relation between wages and the proportion female in an occupation was not large.

In my paper I would have liked to discuss comparable worth in practice, but there really isn't very much that can actually be studied since comparable worth isn't really in effect in any major way. I did go through the *Washington State* example. I think that just going through what that comparable worth study actually produced would raise a number of eyebrows. I think that individuals reading through how points were assigned for different categories would be troubled. Most people, I think, would disagree, and I think that it illustrates that there really isn't any independent way to define worth or value. If it were implemented, however, there could be significant effects. The study does conflict greatly with the pattern of actual wages; that is, the wage scale that the *Washington State* case would enforce is quite different than the wage scales that exist in the economy. But the changes, if this is a model of what comparable worth would bring, the changes would be radical indeed. From the point of view of an economist, the fact that the study was done does not mean that study was a measure of nondiscrimination, although the judge did not rule that way.

To conclude, advocates of comparable worth see it as a way of raising women's economic status and, quite expectedly, tend to minimize cost. They often point to child labor and the minimum wage and say, "Look, nothing so bad happened as free market fans complained would occur." Well, evidently they are unaware of the numerous economic studies that have shown disemployment effects of the minimum wage. But the minimum wage as it has been passed in this country was never terribly radical. Nobody has proposed a $15 per hour minimum wage, because I think that people basically understand what would happen, that there would be extensive disemployment. I think that comparable worth is more in the league of a $15 an hour minimum wage, or sweeping legislation such as prohibition. Of course, I think in terms of the economic distortions that would be caused; they would be profound. Curiously, this is recognized by one comparable worth proponent (Nancy Barrett) who suggests that "we give very serious consideration to the idea that firms that raise pay for disadvantaged occupations get special tax incentives for capital equipment that will raise the productivity of these workers. We can't expect firms to swallow these losses." I agree there would be losses. Therefore, I think one should wonder why one would do this.

I'd also like to point out that long-term welfare recipients—the reason that Nancy Barrett wants to go along with this, despite her misgivings, is that she felt it was a way to raise the incomes of poor women having families on welfare—but long-term welfare recipients are not the women holding the jobs covered by comparable worth schemes. The work participation of women who are long-term welfare recipients is low, and the lesson of minimum wage effects has been that those who are most vulnerable to disemployment as a result of wage hikes are those of little education, poor training, and little work experience.

CHAIRMAN PENDLETON. I think we're about out of time.

DR. O'NEILL. I think that another byproduct of comparable worth is that it diverts attention away from the real problem of discrimination that may arise. Such problems need not be confined to women in traditional jobs. Pay differences between men and women performing the same job, in the same firm, at the same level of seniority may no longer be an

important source of discrimination. The form discrimination would likely take is through behavior that may still deny women entry into on-the-job training or promotion on the same basis as men. The obvious solution is a direct one, namely, allowing or encouraging women whose rights are being denied to bring suit. Existing laws are intended to cover this very type of problem.

In the paper, I do go through a discussion of pay-setting procedures in governments. Because they are not open to the market fully, I think they do raise problems. The problem, however, is that they sometimes echo arrangements that you wouldn't want to duplicate in Federal, State, or local pay, namely, wages that are jacked up above market rates by professional organizations or by a powerful union that has achieved too high wages. What this means is that pay-setting procedures can be made more sophisticated in government; that is, they can take account of the length of the queue for some of their occupations, and they can try to see that their sampling of firms is less tainted by nonmarket forces.

CHAIRMAN PENDLETON. We're really out of time.

DR. O'NEILL. Okay. I'm sorry. I didn't understand you.

CHAIRMAN PENDLETON. Thank you. Dr. Rabkin?

Statement of Jeremy Rabkin, Assistant Professor of Government, Cornell University

DR. RABKIN. Since we have two economists on this panel and have heard a great deal of argument about the economics of one way or the other, I thought I might preface my remarks by stating why I don't take the economic arguments very seriously and why, nonetheless, I have a strong preference for market solutions in these things. It seems to me the great intellectual virtue of economics is that it allows you to talk very confidently about the relations between two or more factors without actually knowing anything at all about these factors themselves. It's a way of talking in abstractions, which is sometimes useful, but we ought always to remind ourselves that we are dealing in economics with abstractions that have a great many assumptions packed into them; and it's always very hard to know in real life what these formulas or equations are really depicting.

It seems to me—just in a commonsense way or, if you like, in a political way—the market has two very, very impressive advantages as compared with government regulation. The first is that markets offer a very decentralized mode of decisionmaking and for that reason tend to embrace more information and to use it more flexibly or creatively than the government. The second, which seems to me especially important in this context, is that markets are more impersonal. The market is not any one person, firm, or office. It's a "them"; it's "reality"; it's "out there." Therefore, people tend to accept results much more readily from the market than they do from government, and they tend to channel their energies into accommodating or adapting to market trends rather than fighting them as a personal affront. In sum, it seems to me that markets are a very wonderful mechanism for harmonizing extraordinarily diverse preferences and abilities.

Now, I'm sure some antidiscrimination laws can also be a great force for social harmony. The core meaning of discrimination, it seems to me—and the Supreme Court says this as well in interpreting the Constitution—the core meaning of it is intentional mistreatment of someone on account of an ascribed characteristic like race or sex. In short, it's an insult; it's an affront to the victim's dignity. It seems fairly obvious to me that it will be beneficial to social harmony if you pose limits on people's ability to go around delivering these kinds of insults. But on the other hand, the more broadly or sweepingly you define the term discrimination, the more you encourage people to go around feeling insulted and affronted. When you have a lot of people going around feeling insulted and affronted, that is not going to be good for social harmony.

Now, a lot of current civil rights regulations have this character. They suggest that if a current practice could be otherwise—for example, an employment selection criterion—and the change would benefit a particular group, then the failure to make that change is an affront to that group. It's discrimination against it. The rhetoric of comparable worth seems to me to go very far with this. It seems to be a logical extension, if not a caricature, of this position. Some of the advocates of comparable worth keep returning to this figure, that women are only paid 60 percent as much as men. One could imagine an economy in which this weren't so and, therefore, it's somehow said to be an affront to women that we allow this to continue.

I would put my arguments against comparable worth, against trying to implement this kind of regulatory scheme, most succinctly in these terms. What you do with a comparable worth scheme is

you sacrifice the benefits of the market. On the one hand, you sacrifice the greater adaptability and intelligence of decentralized decisionmaking and instead get government formulas which are bound to be more rigid and clumsy. Secondly, and I think more importantly, you sacrifice the impersonality of the market, and along with that you sacrifice people's tendency to accept and accommodate to market realities, and instead, you encourage them to feel aggrieved and to litigate, complain, and try to force changes in the positions they currently occupy. You encourage an attitude that says, "I'd rather fight than switch," and that, I think, is not a terribly good thing for our society.

If you try to visualize what a comparable worth scheme would look like, if it's actually implemented in a serious and large-scale way, I think there are three particular problems worth drawing attention to. The first is the unmanageable scale of it. I don't see how a comparable worth scheme could be confined to a narrow, surgical intervention. When you upset the advantages of the market in the name of comparable worth, I think you're going to be doing it almost necessarily on a very, very large scale.

I was impressed by some of the testimony we heard this morning and yesterday about experiences in State government. I think it's possible that State governments would find this easier to do because they don't face competition and, to a certain degree, they can always supply themselves with more revenue by raising taxes. But in any case, whatever the advantages of State government in implementing comparable worth, I don't think there is any serious prospect that this could be limited to State governments if it's made a part of our civil rights code. If it is now understood to be a requirement of Title VII—as, for example, Mr. Newman was saying and, of course, Judge Tanner in the State of Washington—if Title VII requires comparable worth, then of course, it already applies to the private sector. I have noticed that the bills in Congress regarding comparable worth are very explicit about this. They expect it to apply to the private sector.

Furthermore, I don't see how it can be confined to women. In popular discussion it's usually related to the pay gap between men and minorities. But in presentations here, people have mentioned women and, of course, minorities. Title VII applies not just to women; that is, it applies not just to sex discrimination, but to discrimination on the basis of race and religion. We don't hear much about religious discrimination now, but it might be a basis for complaints too. So, I think there will be a lot of other groups. Our experience in civil rights regulation is that once you start adding groups, it's very hard to stop. Indeed, it seems to me that once you set up this machinery, there is no reason why white males should not be able to demand comparable worth.

I very much agree with the implication of a lot of questions by Vice Chairman Abram. If you go back to debates about affirmative action a decade ago, one of the arguments was that this was very dangerous because it would start with a few groups and then we would add more and more groups, and lots of other people would come forward and say that their group was also underrepresented or underutilized so they should have affirmative action too. Well, one of the things that stopped that, that prevented that from reaching a totally absurd extreme—I think it was somewhat extreme, but it was not completely self-refuting; it wasn't 100 groups—one thing that prevented that was that people did not have access to the data. If you were an Italian American and thought that there was a lot of discrimination against Italian Americans in the insurance industry—that's not a hypothetical case; I remember hearing about this in the mid-1970s—it was very hard for you to bring a suit. It was very hard for you to even build political momentum for adding this to existing government programs because you didn't have data to prove your charges. The government was collecting data on only a few groups and not on your group; so you couldn't readily make your case.

Now, it seems to me that the essence of comparable worth is that you're going to be comparing everybody. You're going to be comparing all kinds of occupations, and that is going to be providing data for anybody—white male, old or young, whatever kind of background—to say, "My occupation is being underpaid relative to all the criteria of worth which government has established." They'll have the data right in their hands. I know Ms. Grune and several people have said that comparable worth will only apply to those occupations which are dominated by women. "We'll only look at whether those fit in with the rest." It seems to me that that would be sex discrimination itself. We only do this for women, only those occupations that are dominated by women, and for the rest, "Too bad; you don't have any protection." But the existing civil rights laws speak about discrimination on the basis of race,

sex, and other abstract criteria. They do not say only particular groups are protected. As I said, it seems to me it would be discrimination on the basis of sex to say the government will intervene on behalf of women, but not on behalf of men. It will intervene on behalf of minorities, but never on behalf of majorities. I think it will be very, very hard to confine this to a few protected classes.

Finally, let me add just one more observation on this same general point about the tendency to expand this program to an unmanageable scale. Even if, somehow, we are able to restrict this just to special protected classes or victims of direct discrimination, I still think it is hard to see how this could be confined to a handful of occupations which are, let's say, 70 percent female. I know that was the cutoff in the AFSCME case in the State of Washington. But I don't see the logic of that. It seems to me if an occupation or a job category is as much as 35 percent women, it is very plausible to argue that that is much more than in most other occupations. It's much more than one would normally expect, and that, in itself, is plausible evidence that there's an overcrowding of women there that is beating down the average wage. And so, even though only 35 percent of the present holders of this job are women, still these people are having their wages depressed by the residual effects of sex discrimination. It seems to me that that kind of argument can be applied to a very, very large portion of employment situations in this country.

So, the first general problem in implementation is going to be confining the scale of this, and I really don't see how that's going to be done.

The second very large general problem is reducing this to a couple of clear objectives. The great thing about the market is that it has no clear objectives of its own. It's just the overall result from lots of people making their own arrangements. But government programs have to have objectives. If you're setting up a government program, you better have a reason; you better have a goal. Now, what is the goal here? It seems to me there are several different goals. They are likely to be in conflict, and most disturbing is that one can predict, given the experience of other regulatory programs in this field and regulatory programs in general, when you have contradictory objectives, each of which is rather appealing, each of which has its own constituency, government agencies are very reluctant to choose. They don't come down on one side or the other. They try to compromise; they try to preserve their maneuvering room. The result, very often, is that they achieve none of the possible objectives because they can't choose between them.

Stop and think about what the objectives here are. Is the objective here to establish a fair process for deciding on people's wages for everybody, or is it to raise the wages of women? I think, just on the basis of statements we've heard here in the last day and one-half, one could argue it either way. If you think about what is going to happen in real life, there will be a lot of pressure from people who are not in the protected classes to say, "Look, this has got to be done fairly. You've got to have procedures which I can accept, which properly rate my wage." On the other hand, of course, there's going to be a lot of pressure from women's groups and other groups to have criteria and have a system which will ensure that women do get more money. So, there will be that kind of pressure. Do you settle on some kind of general, fair procedure, or do you have a real result-oriented approach which will always help women?

Moreover, I think there are bound to be conflicts between minorities and women. People speak about them as if they have exactly the same interest. I don't see why that should be so, or at least why that should always be so. A lot of criteria that might be favorable to women—that is, pay criteria such as years of education or educational credentials—if you took these seriously, you might indeed raise the pay of nurses. But, on the other hand, you might depress or at least relatively depress the pay of carpenters, tree trimmers, and other blue-collar workers. And many of these blue-collar workers may be minorities. So, there will be that kind of tension, and in particular cases against particular firms, you can see tremendous cross pressures being built up.

Finally, another really important contradiction here is between increasing wages as against increasing job security, or at least preserving job security. If the immediate or foreseeable effect of a big wage increase is to force an employer to lay off half of his nurses or school teachers or whatever this female-dominated occupation is, I think you'll find that a lot of women will not want to see this happen, and there will be cross pressures on the enforcing agency. Should it disregard the employment effect, or should it give a lot of attention to that and, therefore, reduce its ambitions for pay increases? I think one could think of lots of other examples of areas in which there will be quite contradictory policy

pressures, and the enforcing agency will have a very hard time in settling down to clear policy.

Without a clear policy you're going to have a regulatory system which is not just esthetically displeasing and looks a little bit confused, but which really is going to be quite debilitated in many ways. If you think about what a bureaucracy involves, you have to have fairly clear standards which a lot of people can process in a fairly routine way. And I think this agency will face tremendous pressures not to clarify and not to reduce it to a routine, to keep things in a kind of muddle so they don't offend different groups who would be offended by a clear policy decision one way or the other. So, this is a second general way in which I think this comparable worth scheme would likely lead to a lot of difficulty; that is, this whole general problem of reducing it to clear policy.

I want to just quickly mention a third generic problem with comparable worth regulation before concluding. I think, in political terms, it's bound to be very, very divisive. It seems to me that, built into this, there's a potential for conflict between women and minorities, and between blue-collar workers and middle-class people. There are certain class tensions here. One thing that's not been mentioned at all and, I think, is very crucial to all of this, is that people keep talking about women's wages as if women were floating around out there all by themselves. A lot of women are married. Indeed, a lot of men are married. A lot of people care about their family income much more than they care in the abstract about the group to which one or another partner in a marriage happens to be connected. I haven't tried to study this. But it would not surprise me if, on balance, even after raising the wages of so-called pink-collar workers, women who are in rather low-level jobs, the net effect of the comparable worth scheme might still be to depress the earnings of working-class families because it may well reduce the wages of their husbands much more relatively than it increases the wages of working-class women. Whether that turns out to be true overall, I think you really have to worry about the perception here that this is helping middle-class women and middle-class families and very much hurting working-class families. So you have this problem of class conflict.

Finally, it seems to me that you're just going to strengthen the perception among a lot of people that the government is, indeed, as people said, engaging in social engineering; that it's simply manipulating people; that civil rights really comes down to a slogan used to cover a scramble for more on the part of particular groups. On the other side, I think you can have a lot of demoralization—you want to warn me about the time?

CHAIRMAN PENDLETON. Almost.

DR. RABKIN. Okay, just another minute. At the same time, I think you can have a lot of bitterness and demoralization on the part of comparable worth advocates who, I think, are bound to be disappointed with the results. Government is just not very good at putting through large-scale changes in society. People look at how much actual redistribution of income government has achieved over the past 40 years; people look at how much actual progress there has been in narrowing the gap between average income of blacks compared with whites; people look at all these things and usually express a lot of dissatisfaction and say, "Oh, the government hasn't done enough." Well, it's just hard for the government ever to do enough. It doesn't have enough hands and it doesn't have enough fingers to really arrange the society in quite the way that people might like. So, I think comparable worth advocates are bound to be disappointed, and that will create an extra level of cynicism and dissension. Add to this the bitterness of its opponents, and I think you can see that the political atmosphere behind this program is going to be very bad, indeed.

One thing I want to say in conclusion. I think probably the worst thing about comparable worth regulation is that, indeed, it is very easily identified with social engineering. It does seem to identify civil rights with government management of society to achieve certain results instead of relating rights to individual opportunity in a diverse and free society. I'm not trying to be rhetorical. I genuinely think there is something un-American about this vision of government in a position to engineer society to come out looking just the right way. I think it will be demoralizing to people. In the most fundamental way, I think it will be subversive of the whole idea of rights, to get people accustomed to a government which can interfere on quite this scale. So, I think the experiment with comparable worth, if it is tried on a large scale, is destined to fail spectacularly, but also quite destructively.

CHAIRMAN PENDLETON. Thank you very much. Secretary Marshall, welcome.

Statement of Ray Marshall, Professor, Lyndon B. Johnson School of Public Affairs, University of Texas

DR. MARSHALL. Thank you, Mr. Chairman. I'm pleased to be here. I'd like to commend the Commission for holding these hearings. I think this is an extremely important subject. While I believe that most of the arguments against the so-called "pay equity" or "comparable worth" notion are overdrawn, I think important issues are raised and those need to be considered, and I think these consultations will do a great deal to help clarify the issues. At least, I hope that's the case.

Let me make three preliminary observations before I summarize the remarks in the paper that you have before you, which was prepared by Beth Paulin and myself.

The first one is that while I'm not an attorney, I agree with Winn Newman's conclusion that discrimination in compensation—which is what we're talking about here—is expressly prohibited by Title VII of the Civil Rights Act and by Executive Order 11246. I also think it's important to point out, of course, that compensation discrimination is not the only form of discrimination, and all of the others are also covered by this title.

The second point that I'd like to make is that a lot of the reasons for the disagreements about this issue relate to differences in conception about how the market operates. I am a specialist in labor markets, and I know that labor markets are not like the bean market and they're not like the stock market; people are not commodities, and the labor market works very imperfectly. I've often observed that when Adam Smith's invisible hand moves in the labor market, it's all thumbs. It is not perfect. I think it's an important institution and we ought to try to improve it as much as we can. But it is not perfect and leaves a lot of room for discretion. Wages are not determined by the automatic forces of demand and supply or marginal productivity. It tends to operate imperfectly.

Secondly, it seems to me to be extremely important to distinguish between the internal labor market and the external labor market. The internal labor market is the market within a firm, say, within the Federal Government, within the State of Washington, within General Motors, or within any particular organization. The labor market operates even less perfectly within a large organization. Within an organization you get consideration of equity, custom, and tradition and not the operation of the forces of demand and supply. That doesn't mean that the forces of demand and supply are irrelevant to that internal labor market. However, their relevance is to what labor market specialists call "ports of entry." That's where you go into the external market to hire people. Another way to put the same thing is that in every large organization, every job is not up for bid and you don't go and look on a board like you do the stock market to see how much they're going to pay you today based on fluctuations in the forces of demand and supply. Workers are immobile. There's an assumption in market analysis that people will readily move. Well, it's costly to move. People don't have perfect information and you get discrimination.

I think one of the problems with all the arguments of "let the market do it" is that there is a great intellectual leap in building a picture of an abstract market and how it operates and then leaping to the market that we have and saying this market is perfect and, therefore, whatever it does should be sanctioned and, therefore, we ought not to have any intervention in that market. In fact, I haven't heard an argument yet about nonintervention in the connection with pay discrimination that we didn't have in connection with discrimination against minorities or anybody else. The basic argument of market specialists was that if you had competition in the market, you would eliminate all these forms of discrimination. Now, those of us who believe in intervention in the market believe interventions which would interfere with a perfect market will improve the market that we have. There shouldn't be discrimination in the market, so interventions to eliminate discrimination cause the real market to operate like it's supposed to theoretically operate. I believe that if you didn't have those market interventions, we would still have more segregated seniority rosters and other forms of discrimination. We had very tight labor markets during World War II, but these markets stayed segregated within firms, and you would still have the discrimination in compensation and other matters without intervention in the form of antidiscrimination legislation.

The third point that I would like to make is that there seems to be a great deal of confusion in a lot of the discussion about the effects of comparable worth. Some of the arguments assume that we're talking about the external labor market and that we're talking about people—individuals and their

characteristics—and that they get paid according to those so-called human capital characteristics. That's not what we're talking about. We're talking about *jobs* and the pay that gets assigned to those jobs. Now, you hope in the real world there is some correspondence between the characteristics of the people and the skill, effort, responsibility, and working conditions, which are the points usually used in job evaluation in order to assign values to jobs. The point of this is that employers—every day, every State government, Federal Government—assign different pay scales to different jobs. And they don't do it by any kind of market quotation. There are places where they have to go into the market at those so-called ports of entry.

Now the main thrust of our paper is to examine the arguments for and against comparable worth, and I'll just quickly summarize our main argument.

The first argument is that wage differentials between men and women are not based on discrimination, according to the critics, but merely reflect demand and supply. As I've noted, the problem with this argument is that it assumes a model of the labor market which is very different from the way wages are actually determined. The forces of demand and supply are important, but they function very imperfectly, leaving room for discretion, that is, for discrimination. Few would argue that discrimination is the only reason for the pay gap. But few objective analysts could argue that there is no discrimination in the labor market against women or minorities or others that are in the classes who tend to be discriminated against. Numerous efforts to account for the pay gap by a variety of techniques usually leave a sizable residual that cannot be accounted for by so-called human capital factors.

However, several points should be made about these generally economy-wide studies. The first is that equations cannot prove discrimination or the absence of it. They merely constitute one piece of evidence to be used in arguments over whether or not discrimination exists. It seems to me that an extremely important point is that you cannot, in the abstract, tell us whether discrimination exists in a particular organization or firm. You have to present the evidence on all sides, and then somebody has to make the determination. Comparable worth, as I've mentioned, relates to specific jobs in particular enterprises. Of course, employers use job evaluation techniques to assign values to jobs in different classifications. I was an arbitrator for 20 years and examined these techniques all the time in wage classification cases. The courts have done it. It was done during World War II. In fact, employers are the ones who insisted that you use job evaluation techniques in order to bring some order into the internal labor market. Of course, job evaluation techniques are not precise. They are inherently judgmental. But so are all compensation systems. There are few, if any, perfect markets for labor, or even markets like the stock and commodity markets. As noted, this is particularly true in the internal labor market and also particularly true for government.

Again, however, these job evaluation techniques leave latitude for discretion. We're persuaded, though, that most job evaluation techniques show a pay gap between predominantly male and female jobs which probably understates the margin for discrimination because they use factors which are more likely to predominate in men's jobs or which are more common among men than women. Indeed, sex bias in job evaluation techniques is a proper concern for any antidiscrimination agency. If it is assumed, as we do, that there is discrimination in the external labor market, then importing that bias into the internal labor market through wage surveys is no defense against discrimination. This is particularly true for government. Governments typically claim to assign wage rates to jobs on the basis of wage surveys from the external market—though I must say the governments rarely use those surveys to exactly determine wages, which is what we found in the *Washington State* case.

Secondly, it is sometimes argued that comparable worth is like attempting to return to the obsolete, medieval concept of the just price. The trouble with this argument is just price or equity still plays an important role in wage determination in internal labor markets, especially in government employment. Governments typically make surveys, but do not translate the results into wage changes, arguing that such survey results are too high or too low—which is an equity and not a market idea. Similarly, most organizations seek to preserve hierarchies of wage payments based on status considerations as when it is determined that Federal employees should not be paid more than Cabinet officers, the President, or Members of Congress; that State employees should not be paid more than their supervisors or the Governor; that wages in one occupation should retain established relationships to other occupation

in order to prevent morale problems; or that no wage should be cut, regardless of survey results. These are perfectly valid considerations for wage and salary administration, but they are not automatic consequences of the forces of demand and supply. Unfortunately, these traditional job hierarchies also contain the consequences of traditional attitudes about men's jobs and women's jobs.

This background makes it possible to deal more quickly with typical arguments against discrimination in compensation or comparable worth. First, there is the argument that the wage gap is due to things other than discrimination. We completely agree. But most studies leave a residual unexplained by other things, which suggests a latitude for discrimination.

The second argument is that comparable worth would require the government to force employers to pay equal wages for unequal work. A variant of this argument is that comparable worth would lead to government wage fixing. The government would not force the employers to do anything, except not to discriminate in whatever compensation system the organization uses. That should be the objective of any discrimination legislation, to see to it that people are not discriminated against for things unrelated to their merit and productivity. The government would not fix wages, though courts might order specific wages where discrimination had been proved after trial.

The third argument is that the acceptance of the comparable worth principle would be very disruptive and expensive. Our response is, "Who knows?" Since you have to look at each one of these cases on its own merit, it would depend on the evidence in each case. Some critics assume comparable means the elimination of wage differentials between men and women. This is absurd. Not many argue that all of the pay differential is based on discrimination. Moreover, the critics frequently assume that what is contemplated in antidiscrimination programs for compensation is that you're trying to cause somebody to be paid more than they are worth. That's not the issue. The issue is to cause people to be paid what they are worth and not less than they are worth because of discrimination.

Most of the arguments about disruption start from the assumption that there is no discrimination in the market, that the markets establish the best wage which is nondiscriminatory, and that any interference with that will cause great disruption. If you'll start from the supposition that there is discrimination, that people are not paid what they're worth to that employer in whatever job evaluation system that employer uses, then you do not disrupt the market by causing people to be paid what they're worth—you improve the market. I think it's great that if you increase the wages in some jobs, you would get more men applying for those jobs. That, after all, is the objective, to be neutral with respect to sex. As noted, however, the evidence of discrimination in compensation must be judged in each case. If much discrimination in pay can be demonstrated to the satisfaction of the courts or administrative agencies, there could be some disruption. But that is the price for correcting serious problems of discrimination. If the critics of comparable worth are correct and discrimination cannot be demonstrated, there will not be much disruption.

We have noted, however, that the theoretical and general arguments used by most of the critics prove nothing. If you assume perfectly competitive labor markets and equilibrium conditions, then any intervention would be disruptive. It also should be noted that most critics of comparable worth assume discrimination to be mainly a specific overt act of discrimination and ignore the institutional patterns, which they assume not to be the concern of public policy. I believe that these institutional patterns are extremely important and should be a subject of national policy.

In conclusion, therefore, whether or not there is discrimination in wage payment is to be determined on the basis of the facts in each case. A remedy for pay discrimination does not require that wages be equal for men and women, only that the jobs be valued on a nondiscriminatory basis. This does not lead to central planning or government wage fixing anymore than passage of the Civil Rights Act led to central wage fixing by the Federal Government. The government does not have to fix wages in order to eliminate discrimination. It is true that comparable worth is based on some elements of just price or equity. But in the absence of auctions for labor, a sizable equity element is inevitable in labor markets. Similarly, job evaluation is not precise. It is inherently judgmental. But it is an established technique in comparable worth cases that would involve no more judgment than ordinarily is involved in wage and salary administration. Thank you, Mr. Chairman.

CHAIRMAN PENDLETON. Thank you.

Commissioner Berry, you have a question?

COMMISSIONER BERRY. Excuse me. I was trying to wait until you finished your testimony, Dr. Marshall, because I wanted to hear all of the testimony. But I'm supposed to catch a plane in about 10 minutes. I don't know if I'll make it.

It seemed to me in reading Dr. O'Neill's paper—which I read while we were sitting here—and reading the other papers and listening to you, that even if everything that Dr. O'Neill said were true—assuming it were true—that women are in certain occupations because they want to be; and even if what Mr. Rabkin said about opening the floodgates is true and you have all these horribles that will occur to the whole world; even if that's all true, would that mean that we should not enforce Title VII's prohibition against sex-based wage discrimination? I mean, I guess I should ask Dr. O'Neill or Mr. Rabkin instead of you, Dr. Marshall.

Would you say, Dr. O'Neill, that even if everything you say is true, does it mean that we should not enforce Title VII's prohibition against sex-based wage discrimination, which is what I understand Mr. Newman, Ms. Grune, and other people who advocate pay equity insist upon?

DR. O'NEILL. I don't think that I said anywhere that I thought that there was no discrimination, or that the ordinary workings of Title VII should be abolished. I think I indicated that they should not be—and I even indicated in the paper where I think there conceivably might be problems. I think that the problems are probably improved as more women are in the labor market. Some discriminatory situations have improved for women. But they are more in the order of women not having access to training programs, promotions, or to situations of that sort. The problem is: How do you define wage discrimination? How do you know when there is wage discrimination? If two people are doing the same job in the same firm, I think it's—even then there may always be some measurement problem of what is actually the same work. But when you start jumping across occupations, how do you know what is discrimination and what is not? I really don't think anyone knows the answer to that. That's the trouble. Ray Marshall says that people's occupations should be paid what they're worth. But what is it that they're worth and by whose standard, and how are we going to know what that is?

COMMISSIONER BERRY. As I understood Dr. Marshall, he said the standard was with the employer, in his own evaluation process, whatever that was. That's what he said, at least, and that's what others are saying.

DR. O'NEILL. The employer, presumably, is doing what he thinks is—is paying what he thinks he needs to pay to get the right number of workers in the jobs that he needs. My own view of job evaluations, a lot of them are purely cosmetic. They're done to sort of arrange a certain amount of order and sometimes they'll smooth over discrepancies and try to arrange patterns in large firms where there doesn't seem to be an occupation that exists in the market and then they try to find something. But these are close. They don't try—I don't think they abstractly, without reference to supply and demand, sit down and say, "Well, to me, a secretary is worth this much and the electrician is worth that much," and try to compare them. That's where there's a problem. I think he or she would say, "I'll pay as little as I can for secretaries and nurses to—

COMMISSIONER BERRY. Don't we have a right to—if the employer insists on using job evaluation techniques in every other setting and if they insisted—as Dr. Marshall and Mr. Newman said earlier—on using job evaluations themselves at the time the Equal Pay Act was up. And, in every other setting, don't we have a right to look at what the employer himself says—himself or herself—

DR. RABKIN. Could I respond to that? I think, with all respect to what Dr. Marshall said, it was extremely misleading. We heard a lot of testimony yesterday from people who were familiar with the way these systems work. They were saying that these systems can be manipulated; that is, the evaluation systems can be manipulated to give you any result that you want. I think any sensible employer is naturally going to manipulate his system in order to show that his status quo is absolutely "just" as it is. Now, it's inconceivable to me that you're going to set up a regulatory program, but not allow the regulators to question how this employer's own system was operated. Because otherwise, it'll be just a complete charade; it'll be silly. So the regulators will have to have some authority to go in there and say, "Excuse me, Mr. Employer, why did you evaluate it in these terms? How does it happen that this status quo is perfectly justified under your system? You must have rigged your rating somehow; let's go over that now." That's one way in which I think it's not going to be left to the employer.

The second thing, you were just saying, Commissioner Berry, "Well, after all, the employers chose to do this." *Some* employers now are choosing to do it. But you cannot imagine this system working without everyone being required to do it because, surely, you are not going to say that somebody who has the misfortune to work for an employer who doesn't choose to do this rating at present is out of luck and cannot make the case. Surely, you're going to require everyone to do this rating, and then you're going to start giving instructions to these people as to how it must be done.

DR. MARSHALL. No, you're not going to do that.

CHAIRMAN PENDLETON. Maybe Dr. Marshall would like to respond to your question.

DR. MARSHALL. Every employer has some system—every large employer has some system besides the market because they don't go every morning, look on the bulletin board, see what they're going to pay people, and then stay with the quotation for people that day. There is no market—for example, take the military analogy. There is no market for majors. You go into the market and get lieutenants and privates. Therefore, the wage structures are not determined by the automatic forces of demand and supply—the market is not irrelevant to what you pay, because you try to keep some relationship between what you have to pay to get lieutenants and retain them and what you pay majors. But you've got a lot of discretion. There's no well-organized market to cause that to be the case. How do you decide how much you're going to pay people within the Federal Government? You certainly don't go into the market or to any other governmental organization and get a quotation on people. There's no such market.

CHAIRMAN PENDLETON. Dr. Marshall, I was suggesting to you, though, that perhaps in your description of the external market, there is a list for today. I've been by many street corners—

DR. MARSHALL. In some markets, yes. That's right.

CHAIRMAN PENDLETON. —in this country where men are waiting to go to work, and they hire on with the person that pays the salary for the day and gives them a legitimate way to earn some income. Of course that's off the books, but it does seem to me like what we're talking about. That does not consider that market at all and there are factors outside of—

DR. MARSHALL. I would consider those markets. That's what I call the external market.

CHAIRMAN PENDLETON. But wouldn't you agree somehow with your description of—you don't put a list up on the wall about jobs today and those men standing on that corner—

DR. MARSHALL. What I say is that most jobs in most large internal labor markets are not done by auction. They are done by contract for some period of time. You negotiate a contract and—

CHAIRMAN PENDLETON. You mean the internal market. I'm talking about the external market.

DR. MARSHALL. That's right.

CHAIRMAN PENDLETON. Would you say in this respect that what you're talking about now and what we're talking in these 2 days here really includes the internal market?

DR. MARSHALL. Mainly the internal market. Absolutely.

CHAIRMAN PENDLETON. And not the external market.

DR. MARSHALL. Absolutely. Mainly the internal labor market because what we're talking about is: How much do you pay that job? What pay rate do you assign to that job? Every large employer has some technique to assign wages to jobs. Now, you don't require a job evaluation to do that. It seems to me that the proper role of the government is to simply say that whatever that technique is, it ought not to discriminate.

CHAIRMAN PENDLETON. In the private market, too?

DR. MARSHALL. Yes, private market as well. Because that's illegal under Title VII—

COMMISSIONER BERRY. Mr. Chairman, can I make this one last comment before I go?

CHAIRMAN PENDLETON. You said you had one question.

COMMISSIONER BERRY. Yes, it was just a comment.

I found it very disturbing, if I understood Ms. O'Neill and Mr. Rabkin correctly, that an employer would have an evaluation system, himself or herself, in this firm, and then when there is a lawsuit or complaint filed or something, the employer would say, "Hey, wait a minute. I only did that because it was cosmetic and I wanted people to think I had a system and the system is not really valid." That was the impression I got. Because I thought after Dr. Bellak's testimony, Hay Associates, and all the rest of the discussion about it, that this was a—the

employers did this because they thought it was reasonable in their firm; it was done on a voluntary basis and they set these procedures up and they followed them. Now I'm losing confidence in them.

DR. RABKIN. What they're saying is just that, "We have this for advisory purposes and we do not take as a binding requirement everything that we get as a matter of advice; we don't necessarily agree to live up to every word in every possible context." That seems to me perfectly reasonable.

Let me add one other thing before you leave. I was very anxious to answer the initial question you started with. You asked us something to this effect: "If it is discrimination, why shouldn't we go after it?" Well, there's been a lot of talk about discrimination, and I just would like to throw out another word which I think is important for us to consider and that is tyranny. Discrimination is a bad thing. Tyranny is also a bad thing. And a lot of times when you're posing the question of why don't we pursue discrimination down to this extent or to this little nook and cranny or that detail, the answer is—and I think it's a perfectly respectable and quite important answer which we shouldn't forget—the answer is, it would be tyrannical to try to do that. There are lots of aspects of personal behavior which some people in this room and I, myself, might think are really bad. If you use an epithet to somebody who has a personal handicap, that's probably a nasty thing to do and it might well be considered discrimination against the handicapped, but we don't want the government making sure that nobody says a bad word to somebody with a handicap.

COMMISSIONER BERRY. Mr. Rabkin, I was talking about discrimination under Title VII.

DR. RABKIN. I understand. But my—

COMMISSIONER BERRY. And I was talking about Federal laws—

DR. RABKIN. But my—

COMMISSIONER BERRY. —tyranny of discrimination. How do you—

DR. RABKIN. And the reason I say this is that it seems to me that in order to set wages in a way which you will accept as nondiscriminatory, I think you have to intervene—I mean "you" generically.

COMMISSIONER BERRY. Thank you.

DR. RABKIN. "You" in the sense of "one." I'm sorry. Whoever it is in the government—

CHAIRMAN PENDLETON. —We'd like to move on with—

COMMISSIONER BERRY. I appreciate that, Mr. Chairman.

CHAIRMAN PENDLETON. Thank you for leaving us in such spirited—

I do see some people leaving and I would like to say at this time that if there's any question in people's minds about the balanced approaches this Commission brings to the public information, I think we've had quite a balanced presentation in these last 2 days on both sides of this issue. I'd like to take the time in front of the audience to thank Ms. Chavez and the staff and particularly Michael McGoings, the Assistant General Counsel who headed the team to put this consultation—and Mr. McGoings is down here in front. I would not like for you to leave here without knowing that there are people who do things and that I am, for one, happy that we were able to present such a balanced presentation on this issue, and I'm certain you'll all be looking forward to the record as it comes out. We have a couple more people with questions. I do know we have the General Counsel, and Mr. Abram would like to ask a couple questions. If the Chair can find some space, there are a couple of questions that I want to raise at some point.

VICE CHAIRMAN ABRAM. Mr. Secretary, I certainly agree with you that there are many interventions in the economic system by the government, interventions which I think are commonly accepted as being in the public interest and, anyway, whether they are or not, they're part of the fabric of our society and our social policy. But I would like to challenge you with a proposition that all interventions—because some are all right does not mean that all interventions are, and I know you would not contend so. But I would like to focus on the degree of intervention which I foresee looms above us in this possible application of comparable worth as a measure of reducing discrimination. Let me give you an illustration from industry.

I know—and you know so much better—that the ILGWU has a large number of machine operators who are paid very low wages and they do very important services. They sew the garments that most of the ladies here, I hope, are wearing with trade union labels. There also is a furrier's union, which is almost entirely, I believe, male. They sew garments, though heavier and much more costly. The ILGWU women who sew women's garments are performing a function very similar to the furriers and, I would suggest, maybe comparable, except in the respect

that the garment commands a much higher price when it's a mink coat and, therefore, the wages are very much higher.

Now, I believe, as you do, that the entry of women into the furrier's union, or the trade, if it's unorganized, ought to be something that the law regulates, that is, at least prohibits discrimination against individuals who qualify from entering into that occupation, and I suspect maybe there are barriers to it that perhaps ought to be knocked down. They're already illegal; are they not?

DR. MARSHALL. Yes.

VICE CHAIRMAN ABRAM. All right. Now, I would—beyond that intervention, the intervention of the government to prevent the women's entrance into the trade—I would have a great deal of difficulty—and I wonder if you would—with a finding that if you had a conglomerate that had a factor that did both, ladies' garments and fur coats, that because there are comparable skills—and really they are, except for the weight of the merchandise—that you have got to pay the woman who sews a blouse what you pay a man who sews a mink skin.

DR. MARSHALL. I don't think any job evaluation system would equate those jobs.

VICE CHAIRMAN ABRAM. I can't believe you on that, sir. I'm sorry.

DR. MARSHALL. I think that most of these job evaluation systems—

VICE CHAIRMAN ABRAM. Well, you're an expert. But let me go further. The result, however, of what I fear would be that blouses would have to necessarily cost eventually what fur coats cost, or approximately, leaving out the materials involved, which means that from the intrusion of the concept of comparable worth as a fight against discrimination, you have skewed the entire market with respect to women's garments. Now this is what I'm afraid of.

Now you say to me, "Sir, how do we know these things, these baleful results, are going to happen?" You asked that question. You speculated that we are seeing specters and ghosts where there are none. May I suggest to you, sir, that you find out too late. Let me give you two illustrations which you may know about.

One is, we cannot—I'm told, I just asked—we cannot give a typing test to an employee of the Civil Rights Commission because, under Title VII, consent decrees, and government consent and intrusion, we have gotten to the point that the 115 entry-level jobs in the Federal Civil Service can no longer be subject to an examination. Speaking to you sir, from my own native State--you come from one in the region, though Lyndon Johnson used to say it's Western—at the University of Georgia, of which I'm a graduate, recently the Department of Education decreed that the Regents examination, as a condition for graduation from the university system—which was a 10th grade reading comprehension examination—could no longer be given because of disparate impact. Therefore, I'm a little skeptical about your assurances because I know the drive between equality in results is a powerful engine, particularly in the hands of strident political forces.

DR. MARSHALL. You're arguing against what we've got now, not against comparable worth.

VICE CHAIRMAN ABRAM. I'm not. I'm just arguing against the extension of it into the labor market to the point, sir, that blouses will cost as much as fur coats; and I tell you that history supports me rather than your optimisim.

DR. MARSHALL. Well, maybe. I think you can have abuses of any system, and I think there have been abuses—

CHAIRMAN PENDLETON. We've got those now.

DR. MARSHALL. That's right. This is not going to add to it. It seems to me that the remedy is to correct the abuses, not to do away with the basic objective. I'm not concerned about outcomes. I'm concerned about means. I'm concerned about you taking techniques that will be discriminatory. It seems to me, though, from my study of this situation, that our courts, as well as our administrative agencies, have really leaned over backwards to protect due process, protect—

VICE CHAIRMAN ABRAM. That's not due process.

DR. MARSHALL. Well, now that's a different situation. When they have found discrimination and proved in a court of law with all the rules of evidence, then the court can take action to correct that discrimination. My view is that, unless we're going to repeal the Civil Rights Act and do away with the Executive order, that we will already get courts having to intervene in these situations. And what I hope would happen is what did happen when the Civil Rights Act got passed in 1964—and documented this pretty thoroughly in your State of Georgia as well as other States—and that is a lot of employers immediately conformed with the law because it was the law. It gave them an excuse to do what they should have been doing anyway, that is, not discriminating.

Now, I believe that you cannot permit discrimination in compensation. Forget about the term "comparable worth." You cannot say, it seems to me, that the only defense is people who are doing identical jobs; you invite discrimination with that rule. You invite employers to say, "All right, I'll differentiate them a little bit and then I'll put people that I'm going to discriminate against in the one I've differentiated. They're no longer identical jobs and therefore not covered." That's the reason that the Court ruled the way it did in *Gunther* and the reason that I think, as the *Washington State* case goes to the Supreme Court, you're likely to get that kind of ruling in it. Now, it seems to be quite different from most of the horror stories I hear about like the one you recite—

VICE CHAIRMAN ABRAM. Sir, these are—this is pervasive throughout the entire Federal Civil Service. It covers 116 entry-level jobs, and the Carter administration entered into this as a consent decree.

DR. MARSHALL. Because the court found—

VICE CHAIRMAN ABRAM. Oh no, the courts didn't find anything.

DR. MARSHALL. Well, they entered into a consent decree for whatever reason.

VICE CHAIRMAN ABRAM. The court did not find anything.

DR. MARSHALL. But they had a court case that was filed.

VICE CHAIRMAN ABRAM. But it was done by administrators who have your general attitude about the question, if I may say so.

DR. MARSHALL. Well, I administered that law, 11246, and I think we did a fair amount to improve the administration of it. This was an internal thing—

VICE CHAIRMAN ABRAM. Let me ask you this, sir. I'd really like to—you have great experience and great learning and I'd like to ask you this. Have you not testified—I'm sure you have—as an expert witness in various labor arbitration cases?

DR. MARSHALL. I was an arbitrator.

VICE CHAIRMAN ABRAM. Right. And you've heard experts.

DR. MARSHALL. Sure.

VICE CHAIRMAN ABRAM. Have you ever seen a claim that didn't have two or three fine experts swearing against each other?

DR. MARSHALL. Absolutely. That's the reason that I believe in our adversarial process.

VICE CHAIRMAN ABRAM. What I'm saying is that you'll find plenty of experts who will say that furrier seamstress or seamster, if that's what he's called, is doing comparable work to the woman?

DR. MARSHALL. I'm not sure of that. I don't know the occupation. But I would doubt it. I would doubt it partly because the material you work with is part of the responsibility that you get points for in any job evaluation system. And, if you're working with a very expensive material, then you're not going to give the same weight to that. Take welding. Welding is a common occupation. But there's a vast difference of just welding high-pressure tanks than just welding pipe on a construction job. There is great variation, and responsibility is one of the factors that anybody will take into consideration in any job evaluation system.

VICE CHAIRMAN ABRAM. I know others want to ask a question, so I appreciate your answer.

May I turn to Ms. Grune just a minute, Mr. Chairman? I want to ask her one question.

Ms. Grune, I gather from you that you believe that the obliteration of all discrimination, by which I gather you really mean equality of result, is of overriding value in the society; that it is so abominable and contemptible—and I agree it is—but it is so much so in your judgment that the obliteration of every vestige of it is worthy of all of our attention and concentrated effort. Do you feel that way?

MS. GRUNE. In the paper you read, I was addressing one specialized type of discrimination—

VICE CHAIRMAN ABRAM. You had that attitude.

MS. GRUNE. —sex-based wage discrimination among comparable jobs. Regardless of whatever my personal feelings may be, it is required by law that this type of discrimination be eliminated.

VICE CHAIRMAN ABRAM. Let me now put this question to you. Would you dispute the fact that a female domestic, often a minority, has incalculable worth to the professional working wife?

MS. GRUNE. Would I dispute that?

VICE CHAIRMAN ABRAM. Yes.

MS. GRUNE. No.

VICE CHAIRMAN ABRAM. Should, therefore, that domestic be compensated regardless of market supply, or education, as much as she is worth as measured by the value of the professional working woman had she remained at home? In other words, should she have your salary?

MS. GRUNE. Well, first of all, when we talk about the pay equity principle, we would apply it to a wage labor situation where there are multiple occupants of more than one given position in a

workplace and where one person or group of people is being discriminated against relative to others. So the type of situation you're talking about where you have one woman working in one household is not the type of situation that this principle usually reaches. The principle can be applied to the problems of maids in hotels, janitors in universities, or laundry workers.

VICE CHAIRMAN ABRAM. Just is just. Why don't you take this as a hypothetical? Why don't you take it out of the context of industry and put it in a home and in a single employee-employer relationship? This is a just principle of a principle for justice.

MS. GRUNE. I'm trying to describe the pay equity principle as it's been used.

VICE CHAIRMAN ABRAM. Okay.

DR. MARSHALL. By definition, Mr. Commissioner, if you only had one person, you couldn't get discrimination within the organization.

VICE CHAIRMAN ABRAM. I understand that. But the element of justice, the ethic is the same.

CHAIRMAN PENDLETON. Mr. Rabkin, just a question or two. Would you say that—what I hear you stating—that equal pay for jobs of comparable worth is a radical or revolutionary concept in your estimation? If that's the case, wouldn't you also say—and this is based on job discrimination now—that job demands by their very nature are often inequitable and discriminatory and that if we do what is being advanced by proponents of comparable worth, this could run really counter to and do devastating harm to the country's free enterprise system?

DR. RABKIN. Well, I'm not an economist. I do take seriously the possibility that this could have very serious and destructive economic consequences. But I am much more concerned about the noneconomic consequences. I just think it will drive people crazy. I think it will really upset people and it will make people think that anything can happen now. I mean, the government just manipulates people in all kinds of ways, and I think it's demoralizing to people to have to live with that, and I mean that seriously. People are laughing as if it's a joke. But people get used to being manipulated in that way in this country, and I don't think it's funny. I think it's very demoralizing. You cannot have a free society if people just come to take more and more for granted that, well, what we do is up for grabs, and if the government wants to rearrange it this way or that way, that's fine because, after all, we're just kind of fodder for the government. I think that is really a serious concern, even if it sounds to you rather rhetorical.

CHAIRMAN PENDLETON. Just one other point. From what you say about it driving people crazy, if it drives people crazy, will it eliminate discrimination as we know it in this country, or will it create more?

DR. RABKIN. One of the things I said in the paper—and I think it's a point worth emphasizing—is that you can drive people crazy and you can cause a lot of disruption without achieving your objective. I think there are many examples of that in our experience from civil rights regulations. There are a lot of cities that have had extremely controversial busing programs which have gotten lots of people upset and sometimes even provoked violence, and yet, when the dust settled, they didn't have more integration; they had less.

CHAIRMAN PENDLETON. My final point for anybody on the panel is: Would any of you consider this to be what I call reparations for middle-class white women, which will leave people uneducated and essentially unschooled at the college level? Is this kind of a financial quota system for people comparable to some other kind of quota system?

DR. RABKIN. I believe that's what it is.

DR. MARSHALL. Well, I don't think that at all. It seems to me that all you're really doing is saying whether you ought to be able to discriminate against people in their pay. Therefore, if you abolish discrimination—and I think society ought to—the only other assumption is that there ought not to be any intervention at all.

CHAIRMAN PENDLETON. In this case, I've heard talk these 2 days about minorities and women. The only people in the Civil Rights Act of 1983 that we have to study and be concerned about are the white males who are eastern and southern Europeans of native descent. They say they cannot get a job because of affirmative action. Many people don't know that's in the law. But I just want to let you know that that is in the law and the only group we have to study are white males of a certain group or ethnicity. Would this comparable worth situation apply to them?

DR. MARSHALL. Well, pay discrimination might—because they could be discriminated against in their pay. That's the issue here.

CHAIRMAN PENDLETON. Not just minorities and women where you're saying that—

DR. MARSHALL. No, no. I thought you were talking about, say, men who could argue that they had been discriminated against.

CHAIRMAN PENDLETON. These men say they are being discriminated against because we have a discriminatory regulation called affirmative action. What I'm talking about is what they define as direct discrimination. Now if that is the case, how is the comparable worth issue contaminated by it, or is it contaminated?

DR. MARSHALL. I don't think it is at all. First, I think the argument is not correct.

CHAIRMAN PENDLETON. I'm not saying that the argument is right. I'm saying they're the only ones in the law that we have to study, and if the Commission deals with this issue, how do you suggest we deal with that group?

DR. RABKIN. I think it would be very easy for people in that category to come forward and say that—well, for example, we've heard a lot of people in the last day and a half say that, "You know, if employers wouldn't be so obstinate, if they would voluntarily do comparable worth assessments, then it would be a lot cheaper." So, perhaps a lot of employers will voluntarily do this as a kind of good-guy affirmative action gesture. I think it would be perfectly reasonable for a group like this to then turn around and say, "Our wages have been relatively depressed or perhaps even actually depressed because of discrimination on behalf of women." I think that would be a perfectly actionable case. I don't know whether they'll win, but they could certainly—

DR. MARSHALL. We got the *Webber* case, which was by a white person.

CHAIRMAN PENDLETON. Well, you know what that was.

DR. MARSHALL. I do know.

CHAIRMAN PENDLETON. Commissioner Ramirez?

COMMISSIONER RAMIREZ. I feel the need to clarify in my own mind whether I understood anything that happened in the last 2 days or not. I think the best way for me to try to clarify that is to go back to the furriers and the blouse seamstresses.

In the case of the furriers and the seamstresses, if there was the determination that, indeed, when we're talking about the same level of skills, differences in responsibility, and—let's assume that the responsibility was the same, let's assume that all of the Hay scale points come out the same. Under pay equity discrimination principles, would you not have to go the next step and determine whether the differences were due to market variables, that is, that there are more or less people who can do furs as opposed to doing blouses. If you could ascertain that the difference in salary was not the fact that one group were women and the other group were men, but that, in fact, there were market factors that were not related to the sex or the race of the employee, would you then *not* have a pay discrimination?

DR. MARSHALL. You might not. If you found that there was no discrimination in the market, then what I think you would have to argue, as we did in the *Washington State* case, that either they said they used the market and didn't, or they preserved the internal wage structure which they knew was discriminatory; it had been established and perpetuated. When asked the question, "Given this structure which you know was discriminatory and overtly discriminatory in its inception, if there's a conflict between what those people get paid in the market according to the survey and what the internal structure dictates, which do you use?" They said, "You use the internal structure, not the market." Well, that evidence suggests that the market argument leaves something to be desired. You can't say that, "We don't discriminate; we pay the market"; and then you show considerable difference between what you pay and what your own survey says you ought to pay.

Now, my main point is this. You cannot determine this issue in the abstract. It has to be determined by adjudication in each case if there is a charge of discrimination. It seems to me that about all the statistical evidence can do is what the Supreme Court suggests is to make a prima facie case. It doesn't prove anything.

COMMISSIONER RAMIREZ. Let me just ascertain one thing. There is a place for market consideration—

DR. MARSHALL. Oh, absolutely.

DR. RABKIN. Not absolutely. I don't know how Secretary Marshall can say that. I think that's a very open question.

DR. MARSHALL. You don't believe you ought to have a market?

DR. RABKIN. I believe that lots of different people have different approaches to this. I don't accept that Secretary Marshall is the definitive word on it.

DR. MARSHALL. I don't either. I agree with that. An informed word, but not definitive.

DR. RABKIN. People said here earlier and, indeed, Secretary Marshall said that sometimes the market

can be discriminatory. Now once you've said that the market can be discriminatory, that seems to me to undermine, if not altogether eliminate, the market defense which you are now invoking. I don't know really how you show that "the market is discriminatory." I don't really understand what that means. That, to me, could mean almost anything, and although I think Secretary Marshall does undoubtedly mean something moderate and reasonable and controlled, again, I think that the record is that we just have no reason at all to assume that something which reasonable people set out in a reasonable way will be a part—

VICE CHAIRMAN ABRAM. Do you believe that there is discrimination in the society?

DR. RABKIN. I believe the term discrimination is so elastic that it can be stretched to cover almost anything and therefore—

DR. MARSHALL. And therefore, we ought not to intervene.

DR. RABKIN. Therefore, we ought to be very, very careful about what we do.

DR. MARSHALL. I agree with that.

COMMISSIONER RAMIREZ. I don't know where you're from or where you grew up. I grew up in the same State Secretary Marshall did. Let me just say that the practice, the common understanding—and this is not an illusion and it's not abstract—if you went today and surveyed men over 50 in the State of Texas and you asked them—and they gave you an honest answer—about whether they set wages for women on the basis that the women were not heads of households and, therefore, they did not need as much money—if the men gave you an honest answer—the rate of response, that has been and is today the basis for wage setting, would be overwhelming. I don't think that any amount of theorizing or need for a legal description of discrimination can negate the fact that, at least in that part of the world where I come from, the practice of paying women less because they were not heads of households has been very much a part of the marketplace.

DR. O'NEILL. But is this all women? Just in women's occupations, or women who are lawyers, any women?

COMMISSIONER RAMIREZ. I said to you that if you went to men in my State and you asked them—and they answered honestly—as to whether they had set wages for women on the basis that they were women, the result would be overwhelming.

DR. O'NEILL. But that doesn't explain how wages of women rise. Women's wages rise all the time; they rise every year and they rise differently depending on what the women did. I am sure that what you're saying is true—that some men may say this. I think they may be patting themselves on the back and taking credit for something that, in a way, they really have no control over; they may observe women who are working and earning less and then take credit.

COMMISSIONER RAMIREZ. I would suggest that you ask men how they have set wages.

DR. RABKIN. I think you're somewhat misunderstanding. I'm not saying that the market is perfectly just. What I'm saying is to beware of open-ended intervention which can be twisted to all sorts of bizarre ends. Again, it is not adequate to say, "Well, the people who are proposing this have good intentions."

CHAIRMAN PENDLETON. Before we have to break this up, I have two more questioners, Mr. Destro and then Ms. Chavez. I'm sorry, we left out the General Counsel, Mr. Disler.

COMMISSIONER DESTRO. I just want to make an observation here, one on the Chairman's comments about southern and eastern Europeans. It's Americans of southern and eastern European descent that we're mandated to study, not white males of southern and eastern European descent.

In any event, what intrigued me about Secretary Marshall's comment about "That's kind of like *Webber,*" is that it exemplifies one of the things that has frustrated me in my experience with national origin discrimination litigation, other than Hispanics or the other recognized national origins, and that's a lack of data. Unless you have the data, you can't prove that there is any discrimination. What I've been listening to over the last 2 days here is how to find the data to prove the discrimination. One of the things that I've been looking at, across the board, is what inferences are raised by what data. One of the things that distressed me about your paper, Secretary Marshall, is not so much the notion that there is segregation, that there is a gap, or that there is discrimination, but seeing it happen myself; I know it's out there and I know that Commissioner Ramirez is quite correct when she says that there are women who are treated differently simply because they are women. It may not always be, because in compensation it may well be that we don't send women out to do those kinds of things. But the point

that you make in your paper that is distressing is where you are taking issue with the simple labor market. You say, for example, "If discrimination is only temporary, how is one to account for the existence and longevity of occupational segregation and the male-female earnings gap, and if discrimination is not the cause, what is?" That strikes me as the first question. But this morning I asked Commissioner Rothchild from Minnesota, "Have you eliminated the gap now that you've instituted pay equity in Minnesota?" She said, "No, there is still going to be a gap, probably." Where do you stop with it? You can still ask the same question and still have to keep readjusting the system unless you finally make the determination to close the gap. So how do you know that you're going to close the gap?

DR. MARSHALL. You don't know. That's the reason you take it on a case by case basis. You present the evidence that you have. If you have statistics in a case, you present that. If you don't, it's always possible to fall back on logic and look at testimony. I believe in our system. I'm trained as an economist. I've always admired the legal profession's concept in rules of evidence. Economists think they know the truth and, therefore, don't have to do anything other than to use their techniques. It seems to me that the approach that you have to use in these contested cases where people argue that their rights have been denied is to have some kind of tribunal to make decisions. I think our courts have leaned over backwards to protect due process, to require that you present the evidence, and I think our commissions have as well.

COMMISSIONER DESTRO. I would agree with you on that. I guess I need the proof that comparable worth is a Title VII issue, especially as a lawyer who has been involved in Title VII cases. One of the things that intrigues me—and I asked the two lawyers who were on the panel this morning—is that in normal Title VII cases, once you've raised your prima facie case there is a presumption that discrimination is the cause in much the same way as you were to presume it in your paper here. If the defense is market defense and the presumption is that discrimination takes place in the market and you can't use the market defense, you may set up what we lawyers call an irrebuttable presumption.

DR. MARSHALL. What I would argue is that it is not necessarily presumed that there is discrimination in the market. You can get evidence to make that determination. I presented one such set of evidence in my paper.

COMMISSIONER DESTRO. What about in female-concentrated occupations like nurses? Because of the concentration, segregation and gap are themselves taken as the evidence of discrimination. As far as I'm concerned—if you can come up with a perfectly fair way to adjudicate this—my only problem here is how to deal with these presumptions.

DR. MARSHALL. Well, isn't this the same thing, though, in dealing with any other case, a murder case?

COMMISSIONER DESTRO. But you don't have the same operation of presumption in those cases.

DR. MARSHALL. Well, the presumption is that the State now has the responsibility to demonstrate that you're guilty. Somebody has the burden of proof.

COMMISSIONER DESTRO. That's right. Because in the States you've got the burden of proving that you're guilty. In a normal civil case, the plaintiff has the responsibility in proving that the defendant is guilty of the illegal or harmful act. The presumption in most Title VII cases arises because it's the employer who has the greatest access to information. But from what I've been hearing in the last few days, nobody quite has access to the information, whether it's employee or employer, to find out how to quantify the degree of segregation even in the market, or in that business, or in the differential between a nurse and a computer operator.

DR. MARSHALL. Well, as you know, a lot of times Title VII cases are lost by plaintiffs. They're unable to make their cases. A lot of EEOC cases are lost because you're unable to present the evidence that there was, in fact, discrimination in those cases.

COMMISSIONER DESTRO. But these are cases where you're inherently turning things on statistics.

DR. MARSHALL. Well, the courts have ruled on statistics.

COMMISSIONER DESTRO. Sure, and that's permissible. But the problem with the statistics that we've been hearing over the last couple of days—I think what Commissioner Ramirez said is that she's trying to understand them—is that I'm not sure the statistics really tell me what I need to know. I have a visceral sense that, having seen the system operate, I know discrimination is there. But one almost feels reduced to the statement that Justice Stewart made in the pornography cases that you know it when you see it. The question is: How is the court going to

know when it sees discrimination and when it sees something else?

DR. MARSHALL. What I would do if were defending either the plaintiff or the defendant—and I'm not a lawyer—but if I were defending a plaintiff or defendant, I would attack their statistics. Of course, sometimes statistics are simply factual. That is, you don't do any analysis. You just present the numbers. There's 10 or there is 12 or whatever.

VICE CHAIRMAN ABRAM. I thought I heard you say, Dr. O'Neill, is that the 60 percent gap becomes a 72 percent gap when you reduce the comparisons to hourly wages rather than gross income.

DR. O'NEILL. That's correct.

VICE CHAIRMAN ABRAM. Then I heard you say that when you factor in and compare comparables, that is, age brackets of 25 to 35, you say it was reduced to 80 percent or came up to 80 percent or 89 percent?

DR. O'NEILL. It's 89 percent for 20- to 24-year-olds.

VICE CHAIRMAN ABRAM. Now, that leaves only a 11 percent gap. Let me ask you this, Secretary Marshall. Couldn't you explain that 11 percent gap that we have now discovered to be the gap on an hourly basis between women who are fairly modern women and men who are fairly modern men? Couldn't you explain that 11 percent gap on such factors as, or at least part of it, as mobility? Couldn't it be explained on cultural differences?

DR. MARSHALL. Unless you found some way to control—

VICE CHAIRMAN ABRAM. The one thing that we've been talking about for days, the 60 percent gap, these papers have been full of it.

DR. MARSHALL. Well, mine is not full of it.

VICE CHAIRMAN ABRAM. I know it isn't and I congratulate you. The literature is full of it and the rhetoric in Congress is full of it. It's down now to a measurable 11 percent gap and probably closing all the time. Why do we need all of this intervention?

DR. MARSHALL. Let me make two points. First, those general statistics that Dr. O'Neill is talking about are approximations to understanding the pay discrimination case in an individual firm. These are general, economy-wide statistics, and we're not talking about that. We're talking about what do you pay that job, not what you pay people. What are the wages assigned to those jobs?

VICE CHAIRMAN ABRAM. But if you get to the problem because of a natural problem, the natural problem is becoming a very small thing.

DR. MARSHALL. Well, what you could have is some people not discriminating at all, some people getting overpaid, and all of that averages out. In fact, it's like the story about the man with one foot in the oven and one in a bucket of ice; on the average he's comfortable. These general statistics frequently conceal more then they reveal.

CHAIRMAN PENDLETON. Dr. Marshall, if that is the case that you just stated, then it seems you're talking about paying for that job as one factor, and then you pay for performance. It seems to me you'll never get to comparability if performance is a fact in how you pay. You mentioned earlier in your statement that this would be entry-level salary, which would be comparable. Now does it mean that we have to look forward to some comparabilities in performance if we can't measure everybody on the same scale?

DR. MARSHALL. Actually, it doesn't have much to say about performance of those people in those jobs. What you're saying is what kind of skill, effort, responsibility, and working conditions attach to those jobs.

CHAIRMAN PENDLETON. I agree with that. But at some point down the line there's got to be some kind of performance measurement, right? Does that upset the applecart about comparability?

DR. MARSHALL. Because you would get rid of those individuals if they didn't perform.

CHAIRMAN PENDLETON. Ms. Chavez?

Ms. CHAVEZ. I just have one question for Secretary Marshall.

This morning, Winn Newman, under a line of questioning from me, suggested that Title VII, as currently written, was probably adequate to deal with sex discrimination and wage setting in the marketplace. Of course, his interpretation of the Title VII might differ from mine and from some Commissioners. One of the reasons we have been drawn together to discuss comparable worth is that there are pieces of legislation pending in the Congress and also in State legislatures that are specifically comparable worth statutes, as opposed both to Title VII and to equal pay for equal work under the Equal Pay Act. Is it your understanding that Title VII is adequate, or do we need legislation that adopts comparable worth language into the statutes?

DR. MARSHALL. I believe we will have a determination of that when the Supreme Court rules in the *Washington State* case. If they sustain Judge Tanner in *Washington State,* then I think Title VII will cover it and that you probably won't need legislation. If they do not, as in many other cases, you might need legislation. That doesn't, of course, keep the States from needing legislation to deal with whatever problems they perceive they have.

MS. CHAVEZ. But if the Supreme Court adopts an interpretation of Title VII—

DR. MARSHALL. Then Winn's interpretation makes a lot of sense to me—not being a lawyer, but having followed these cases for a long time.

DR. O'NEILL. I'm not a lawyer, but I do know something about the *Washington State* case and I think that if the case is ruled on, it will be simply because of the unusual circumstances in that State, where the State happened to have done a comparable worth study—and I think the final ruling came down that could have said, "Everybody with red hair should get a 30 percent increase in pay because our study shows that occupations that have a lot of redheaded people are worth more," and it would have been ruled on. If you look at the particulars of the so-called comparable worth study, I think anybody who sort of even—you know, the definition, for example, this is a panel of 13 politically chosen people who were given some guidance by Willis Associates, and they rank the occupations the way they please. I think the way it came out, you could only conclude that the way they ran the thing was in a way of bias for its finding that women's occupations should be ranked higher than men's because they systematically chose things that way. I don't think that it would pass muster.

DR. MARSHALL. It did pass muster—let me say that—in the court.

DR. RABKIN. Would you really rely on courts to assure the integrity of these things?

DR. MARSHALL. Well, who else is going to protect it?

DR. RABKIN. Congress, by the way it writes the laws. And it hasn't written any law on this yet.

CHAIRMAN PENDLETON. Commissioner Buckley, do you have a question?

COMMISSIONER BUCKLEY. I'd like to address Dr. O'Neill. I was wondering if you could help me. For the last 2 days we've been hearing a lot about figures, right? You finally came up with a figure that deals with the weekly earnings, the hourly earnings, and it brings us close to that 11 percent difference. Is it possible that that 11 percent difference will be due to marital status that Dr. Polachek referred to? He brought out married versus unmarried and he brought it down from 11 percent due to that.

DR. O'NEILL. That particular differential is for people, more or less, starting out, 20 to 24 years old. Within the group, what typically happens is that women who are not married earn more than women who are married, and I think it's for the reasons that I'm sure Dr. Polachek mentioned; that is, differences in responsibilities and the fact that married women have less freedom of choice than single women. As a group, since women are marrying later, that may be one reason why the differential has narrowed for that age group because there are fewer married women in the 20 to 24 age group and fewer women in that age group who have young children. Fertility has declined considerably.

CHAIRMAN PENDLETON. Mr. Disler?

MR. DISLER. Secretary Marshall, I have a couple of quick questions. I take it that it's your view that even noting that the market isn't perfect, market factors of supply and demand are relevant in wage setting.

DR. MARSHALL. Are very relevant.

MR. DISLER. You note that even in the military they're not irrelevant.

DR. MARSHALL. That's right. That's not my argument. My argument is that the market forces are sufficiently imprecise to leave room for discrimination.

MR. DISLER. There was a remark that you made that—and you made remarks like that in your paper—there was one sentence I want to read to you. I want to make sure it is not out of context. You said that you would decry people's misstating what comparable worth is about and what it would require, and you said in one part of your response, "If a firm through job evaluation, determines that a man's job is just as valuable to the firm as a woman's job, then the employees in both of those jobs should be paid equally even though the jobs themselves are quite different."

DR. MARSHALL. Yes.

MR. DISLER. All right. Now let me ask you this. You note that market factors can be relevant to wage setting. I take it that seniority would also be something that you would permit.

DR. MARSHALL. Modify.

MR. DISLER. Okay. Would you also agree that the labor markets—although they're not the same thing as a commodity market, as you pointed out—are not static?

DR. MARSHALL. That's right.

MR. DISLER. Would you allow, then, an employer who on day 1 has a job evaluation system and pays wages according to it, on some day thereafter—day 30, day 60—to respond to supply and demand?

DR. MARSHALL. Sure.

MR. DISLER. Now, given that the labor market is not static and there are also seniority factors involved here, too, what would be left to a comparable worth system?

DR. MARSHALL. Once you make the adjustment, maybe nothing. Once you eliminate the differential, then you assume that the adjustment process will take care of itself. One of the main reasons that you're concerned about anything is not the structure of wages but the level.

MR. DISLER. So in other words, once that job evaluation is put in place, you're prepared to say—

DR. MARSHALL. I don't believe you would need them. In my view, the best way to handle these cases is through negotiation and collective bargaining in most organizations and, therefore, they can adapt the situation to their own requirements. But whatever system they use, they shouldn't be discriminatory.

MR. DISLER. Let me make sure I understand you. You're saying that once this job evaluation is put into place, responding to supply and demand is something that would be consistent within comparable worth.

DR. MARSHALL. Yes. But then, of course, somebody might want to argue the question of whether or not this point that you're responding to is itself discriminatory. But that's a different issue.

MR. DISLER. Okay. Would you also say that the content of jobs is not static?

DR. MARSHALL. I did not.

MR. DISLER. Okay. The reason why I raised that and mentioned also the other questions is that I'm not as optimistic as you are that comparable worth advocates, for example, would be willing to settle for a one-time implementation and then rely on the markets.

DR. MARSHALL. Well, they did, for example, in the AT&T case, which was one I was involved in, and I don't think there has been any substantive litigation in that case. It was a sex discrimination case, among others. My reading of this situation is that you don't get the same company suit over and over again of the same organization; that once you make an adjustment and then develop a mechanism to adjust grievances arising out of that system, you're not likely to have subsequent litigation. If you did, if it's Title VII, then what it would mean is that you file a complaint with EEOC and they dismiss it, as they do cases that get filed that are dismissed without sufficient merit to investigate.

MR. DISLER. Would you agree that it may be a little early for either of us to predict?

DR. MARSHALL. That's right. Sure. The only complaint I've got about this whole business is that I don't think you can really tell until you get the facts in each case.

MR. DISLER. Thank you.

CHAIRMAN PENDLETON. Mr. Destro?

COMMISSIONER DESTRO. I just have one for Dr. O'Neill and Dr. Marshall. I was intrigued by one of the comparisons that was made in Dr. O'Neill's paper that comes out of the *Washington Post.* This illustrates my need for getting a handle on how we come up with one of these discrete evaluations. The one I'm looking at is where a clerical supervisor is rated equal to a chemist in knowledge and skill and mental demand, but higher than the chemist in accountability and thereby receiving more in total points. Then when you take the whole thing in that internal market and compare it to the external market, you have a 41 percent differential just the other way around. I suppose I could do fairly well as a clerical supervisor, but I wouldn't trust myself mixing up nitroglycerin. I don't really understand how you can weigh two jobs like this. One presumes a lot of academic and scientific knowledge; the other one is maybe knowledge of people that you acquire on the job. How do you rate them the same? The outside market simply doesn't. I would suspect that if you compare many clerical supervisors, they wouldn't rate them the same either.

DR. MARSHALL. I think the outside market might. I think you have to look at that to see. But the answer is that employers do it everyday. They have got to assign some wage rate to the chemist job, don't they? They have got to assign some wage rate to the clerical supervisor job, don't they? Therefore, they do it. The common denominator—people say this can't be done, but one of the reasons we have money is that's the way you equate jobs.

COMMISSIONER DESTRO. But I guess my point is: How do you weigh the factors? I know it can be done.

DR. MARSHALL. I think if you did it, you could be challenged by the standards of the profession. The job evaluation has been in existence in the United States since World War I and was used significantly during World War II and is used increasingly. Employers are the ones who insisted that it be used, especially in big organizations. There are a variety of techniques. There is no one particular technique, just like there is no one type of market.

COMMISSIONER DESTRO. I understand that. But I'm asking about this particular one. It seems to me that any job evaluation technique which comes out with a 41 percent internal differential from the external differential is accounted for by a lot more factors than discrimination. It would seem to me that what they're doing is valuing the jobs and making a discrete judgment that a chemist is worth less than a clerical supervisor.

DR. MARSHALL. The point I emphasize is that job evaluation, however it's done, is inherently judgmental and some are simply more subject to market forces than others.

COMMISSIONER DESTRO. Dr. O'Neill?

DR. O'NEILL. Well, that was exactly my argument, which is why I said that we would be getting ourselves into a horrible mess, since judgments differ from one person to another and that it would lead to dissension. The market is quite impersonal. There is nobody to throw something at if the job that you know how to do goes up or down in wages. But there would be if we had identifiable boards and people who are saying that what you do is not worthy, or what you do is very worthy, and you start getting sort of a capricious situation.

DR. MARSHALL. You get capricious situations in the market as well.

DR. O'NEILL. And if there are, and if you know what's causing them, then I think it's usually some restriction that is causing it, and the thing to do is to get rid of—

DR. MARSHALL. One of the restrictions might be that some people are born poor and black.

COMMISSIONER DESTRO. That's an understandable one. But the one I wanted Dr. O'Neill to focus on—

DR. MARSHALL. The market assumes that everybody has got the same number of votes and they don't have.

COMMISSIONER DESTRO. The one that I wanted Dr. O'Neill to focus on, though, is with respect to this particular evaluation in your paper. Do you know, or is it available to find out, the breakdown of how you can rate a clerical supervisor equal to a chemist in knowledge, skills, and mental demand? I'd like to see how the points were assigned in those categories.

DR. MARSHALL. We can get it for you. I think Winn Newman probably has it.

DR. O'NEILL. In the court case there are materials from the State of Washington and, essentially, the panel of 13 was given job descriptions and it was their interpretation of the job description.

COMMISSIONER DESTRO. They did have job descriptions?

DR. O'NEILL. Job descriptions—and I think they did journey to some sites and looked at the work.

DR. MARSHALL. And they later refined it.

COMMISSIONER DESTRO. Okay.

DR. O'NEILL. The thing remained constant since 1974.

COMMISSIONER DESTRO. Okay. This is really done, basically, through perceptions of the job based on a written job description.

DR. MARSHALL. By the job evaluations written by the supervisors in those jobs.

COMMISSIONER DESTRO. Right. Then there was some kind of a scoring mechanism, and that's what we got from Hay, right?

DR. MARSHALL. I think that is the important thing.

COMMISSIONER DESTRO. Or whomever. All right. That's fine. Thank you very much.

CHAIRMAN PENDLETON. I think these hearings have come to a close. I want to thank all of the audience that came. I know some ladies that I talked to came from far places to hear this. I hope you got as much out of it as we at the Commission did, and I hope that when we have future consultations you're able to attend in larger numbers and you are able to maintain as much interest as long as you have.

Thank you very much for attending. These proceedings are now closed.

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